A LEGAL APPROACH TO THE GREEK TURKISH CONTINENTAL SHELF DISPUTE AT THE AEGEAN SEA

A Master's Thesis

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AT
THE AEGEAN SEA

The Institute of Economics and Social Sciences
of
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by

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I certify that I have read this thesis and have found that it is fully adequate, in scope and in quality, as a thesis for the degree of Master of Arts in International Relations.

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ABSTRACT

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This master's thesis aims to analyze, in detail, the issue of the delimitation of the continental shelf areas in the Aegean Sea, which can be accepted as one of the most challenging disputes between Greece and Turkey. This research, while analyzing the nature of the dispute, the approaches of Greek and Turkish governments respectively and the applicable international legal rules, also aims to provide a permanent settlement proposal that would be fair and equitable to both sides.

Keywords: Continental shelf, bilateral disputes, delimitation, UNCLOS

ÖZET

EGE DENİZİ'NDE TÜRK YUNAN KITA SAHANLIĞI ANLAŞMAZLIĞINA HUKUKİ BİR YAKLAŞIM

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Bu yüksek lisans tez çalışması Türkiye ve Yunanistan arasındakı en zorlu anlaşmazlıklardan biri olan, Ege Denizi'nde kıta sahanlığının iki ülke arasında sınırlandırılmasını ele almaktadır. Bu çalışma, anlaşmazlığın içeriğini, Türk ve Yunan hükümetlerinin konuya yaklaşımlarını ve uygulanabilecek uluslararası hukuk kurallarını ortaya koymakla beraber, her iki taraf için de adil ve hakkaniyete dayalı kalıcı bir çözüm önerisi sunmayı da amaçlamaktadır.

Anahtar Kelimeler: BMDHS, ikili anlaşmazlıklar, kıta sahanlığı, sınırlandırma

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INTRODUCTION

Greece and Turkey, the two neighboring states of the Aegean Sea, share a history of cooperation as well as conflictual relations. From the mid-1950s up until today, the two states have fallen into several disagreements, some of which turned out to be major crises that brought them to the brink of war. The main source of conflict between the governments of Greece and Turkey tends to stem either from Cyprus or the Aegean Sea. These issues not only remain to be unsolved, but also result in the continuous unstable and tense atmosphere in the region.

The purpose of this thesis is to deal with one of the central disputes over the waters of the Aegean: the issue of delimiting the continental shelf areas in the Aegean Sea between Greece and Turkey. The continental shelf issue should neither be considered as a simple maritime delimitation issue, nor should it be taken as a mere political issue between states striving for more territorial gains. Above all, with its unique configuration, the Aegean Sea constitutes a special maritime area that deserves a special study. No where in the whole world a similar sea exists, where many relevant factors needs to be taken into account for a just delimitation.

The unstable and conflictual relationship of Greece and Turkey over the Aegean is not only a matter of bilateral political relations between the two, but is also an economic

one. What is striking about the issue is that, the current deadlock over the delimitation of the continental shelf areas deprives both states from making use of possible economic resources. This is because; only a permanent solution to the problem will allow both states to benefit from the natural resources from the continental shelf of the Aegean Sea. In 1976, Turkey had offered Greece the joint exploitation of the natural resources underneath the Aegean, however this had been rejected by Greece. Thus, these resources could not be used since the Bern Agreement of 1976 where Greece and Turkey agreed not to explore and exploit the reserves under the sea, which resulted in a significant economic loss.

Moreover, when looked from another perspective, the continental shelf issue between Greece and Turkey is as much important for European politics. After the disintegration of the Soviet Union and along with the new political map of Europe, European Union (EU) has obliged its member and candidate states to resolve their territorial and sovereignty issues as a fundamental and indispensable condition for a conflict-free European geography. This policy was reflected in the 1997 EU Summit in Luxembourg, in which it was asked for the resolution of the Greek-Turkish disputes. As a candidate state, this put a harsh obligation on the shoulders of Turkey to show effort on smoothing the relations with her neighbor and to seek for a solution.

In this regard, it is quite crucial to find out a solution for the dispute as early as possible. Affecting them politically and economically, both states are obliged to come up with an answer to the problem between them over the Aegean Sea. This study aims to suggest a

possible solution to the dispute that will be acceptable and just for both sides. Consequently, it outlines the sources of the dispute within its historical context, analyzes the approach of the two governments to the problem and reveals the applicable international legal rules to the dispute. The thesis provides a resolution for the settlement of the dispute so long as both sides are willing to solve the issue in the light of international law.

In this context, initially, the history of Greek-Turkish relations is studied in order to have a better grasp of the nature of the relationship of the two Aegean states and to understand why these issues had not been solved in the previous decades. The first Chapter, handling the historical background of the relations of Greece and Turkey, thus includes the era before World War I, the foundation of the new Turkish State that entailed years of cooperation and the western alliance that connected the two to each other. This period is followed by conflictual relationships, starting with the Cyprus problem and continued with the continental shelf issue; harassments to one another in the Aegean.

To give an insight to the continental shelf dispute, the following chapter focuses on the characteristics of the Aegean Sea that bears in itself tricky problems because of its extraordinary configuration that necessitates special solutions. This is followed by the legal concept of the continental shelf; how it evolved and how it was perceived by states. The fourth Chapter analyzes in detail the chronology of incidents that occurred under the heading of the continental shelf dispute in the Aegean Sea. It starts by focusing on the roots of the conflict and reciprocal reactions to one another, continued by a summary of

the negotiations held in 1970s and 1980s in order to settle the problem. Individual and bilateral attempts to bring a solution to the issue are covered in this chapter with reference to official documents and correspondence between the two states.

The fifth Chapter concentrates on the legal justifications that are put forward by Greece and Turkey respectively, to display their own solutions to the problem. As the two sides can not reach an agreement on the area of the dispute, the way to settle the dispute or laws applicable for a settlement, the next chapter presents what the international law of the sea offers in respect of the Aegean Case. This chapter takes into account the special character of the Aegean Sea and accordingly outlines the international legal rules applicable. It also makes reference to previous relevant judgments of the International Court of Justice (ICJ) as a source of international law. An overall evaluation is provided in the concluding part, paving the way to a solid and more importantly permanent solution to the stormy situation in the Aegean.

CHAPTER ONE

HISTORICAL BACKGROUND OF GREEK-TURKISH RELATIONS

Greek-Turkish relations concerning the Aegean Sea is not separable from other issues between the two neighboring states, as every political issue had its effect over the Aegean disputes in the history of Greece and Turkey. The cooperative relationship within the first half of the 20th century had a positive reflection on the waters of Aegean; whereas continuous conflict during the second half of the century paved the way for endless conflicts, resulting in a deadlock in the Aegean Sea.

1.1 Greeks and Turks before World War I

In line with traditional Greek foreign policy, the Greek-Turkish relations are often shaped by the *Megali Idea*[1]. Although there is no specific definition for the concept of

[1] "*Megali Idea*" means Great Idea in English. The term was invented by Ioannis Kolettis, who was appointed Prime Minister in 1844 in Greece. Then, politics of personality being popular in Greece, Kolettis constantly referred to this concept that Greeks must be reunited by annexing Ottoman territories adjacent to the republic. For further details on the evolution and the development of *Megali Idea*, see Richard Clogg, *A Concise History of Greece,* (Cambridge: Cambridge University Press, 1992), pp. 47-99.

Megali Idea, it refers to the establishment of a greater Greece, the Great Greek Empire or a Hellenic Cultural Empire[2]. Since Greece had gained its independence from the Ottoman Empire in 1821, it constantly strived for more territorial gains at the expense of the Ottoman territories. The Greek ambitions included the Western Anatolia as well as the whole Aegean Sea and the islands, not to exclude Cyprus.

The Ottoman Empire on the other hand was struggling for survival during the same period of time. It lost considerable territory in the 19th century. In the beginning of the 20th century, World War I brought Greece and the Ottoman Empire against each other, due to British promise of the Western Anatolia to Greeks and the thought that the German power would help Turks regain their lost territories. The World War I was followed by the Turkish War of Independence in Anatolia, where Greeks and Turks fought in the eastern coast of the Aegean Sea[3].

1.2 Peace Treaty and a New Era

After the Greek-Turkish war ended in 1922, the Lausanne Treaty was signed in July 24, 1923, which set the foundations of the new Turkish state as well as solving the territorial and minority issues with Greece. Following many years of war, the Lausanne Treaty ensured peaceful relations between the two states in the coming years. The treaty is a

[2] Suat Bilge. *Büyük Düş, Türk Yunan Siyasi İlişkileri,* (Ankara: 21. Yüzyıl, 2000), p. 13.
[3] For further details on the Greek-Turkish War of 1919-1922, see Mustafa Turan. *Yunan Mezalimi; Izmir, Aydin, Manisa, Denizli 1919-1923,* (Ankara: AKDYTK, 1999); Salahi R. Sonyel. *The Turco-Greek Imbroglio, Pan-Hellenism and the Destruction of Anatolia*, (Ankara : Ministry of Foreign Affairs Center for Strategic Research, 1999).

significant stepping stone in Greek-Turkish relations as well as a fundamental document that today's relations of the two states rely on.

The main issues that were settled between Greece and Turkey with the peace treaty were the territorial boundary in the Thrace, the sovereignty over the Aegean islands and their status, and finally the population exchange. The land border between Greece and Turkey was defined as the Meriç (Maritza) River, separating the Eastern and Western Thrace, where the formal boundary line would pass as the "thalveg" went along, the center route of the river[4]. As for the maritime boundaries, other than the islands of Bozcaada (Imbros), Gökçeada (Tenados) and Tavşan (Rabbit) Islands, which guarded the entrance to the straits, particularly the islands of Limni (Limnos), Semendirek (Samothrace), Midilli (Lesvos), Sakız (Chios), Sisam (Samoz) and Nikaria (Ikaria) are confirmed to be under Greek sovereignty. In Article 6 of the Treaty, it was stated that, "…islands and islets lying within 3 nautical miles of the coast are included within the frontier of the coastal state". It was provided in Article 12 that "except where a provision to the contrary is contained in the present treaty, the islands situated at less than three miles from the Asiatic coast remain under Turkish sovereignty"[5].

In relation to these decisions, with a view to ensure the maintenance of peace, the Greek Government had to undertake several military restrictions in the islands of Midilli (Lesvos), Sakız (Chios), Sisam (Samoz) and Nikaria (Ikaria). There would be no naval

[4]Lausanne Treaty, Part I, Article 2. See Cemil Bilsel, *Lozan,* (İstanbul: Soysal, 1998), pp. 17-19. For the realted provisions of the Lausanne Treaty, see Appendix A.

[5] In view of these provisions, the Lausanne Treaty implicitly recognized the status of 3 nautical miles territorial sea of Greece and Turkey prevailing at that time.

bases and no fortifications, the Greek military aircrafts will be forbidden to fly over the territory of the Anatolian coast and the Greek military forces in the said islands will be limited to the normal contingent called up for military service[6].

One other significant issue that was held in Lausanne was the minority problem between the two states. The matter was dealt in a separate protocol signed on January 30, 1923 that decided on a compulsory population exchange. "The Convention Concerning the Exchange of Greek and Turkish Populations" provided for the exchange of Greeks of Anatolia and the Turks of Greece, with two exceptions – the Greeks of İstanbul and the Turks of Western Thrace. In total, the Greeks who left Turkey amounted to 1.000.000 and about 400.000 came to Turkey from Greece[7]. Although the population removal of this mass was a problematic and a painful process for the two communities, the exchange actually aimed to remove a possible friction in the future, by helping create more homogenous nations.

Right after the Lausanne Treaty was signed, numerous problems arose on the population exchange constituting a continuous and obstructing matter, which hindered the relations between the two states approximately a decade. From the first years, the Greek government confiscated the possessions of the Muslim Turks in the Western Thrace, with the rational of the area being the first place to reside for the Greeks coming from Turkey. Moreover, although it was not comparable to the Greek practice in the Western

[6] Lausanne Treaty, Part I, Article 13. See Suat Bilge, *Büyük Düş, Türk Yunan Siyasi İlişkileri*, (Ankara: 21. Yüzyıl, 2000), pp. 123-125; Şükrü S. Gürel, *Tarihsel Boyut İçerisinde Türk Yunan İlişkileri, (1821-1993)* (Ankara: Ümit Yayınclılık, 1993), pp. 30-34.

[7] Tozun Bahcheli, *Greek-Turkish Relations Since 1955,* (Boulder: Westview, 1990), pp.11-12; Murat Hatipoğlu, *Yakın Tarihte Türkiye ve Yunanistan 1923-1954,* (Ankara: Siyasal Kitabevi, 1996), pp. 45-58.

Thrace, Turkish government taking the Greek possessions in İstanbul disturbed the Greek government in the same manner[8]. Also, the nature of the exchange inherently had difficulties about who were the people to be transferred and problems in fact continued even after bilateral talks to overcome the vicissitudes. With Eleftherios Venizelos getting into power in 1928 in Greece, the issue was gradually overcome, and on June 10, 1930 the "Ankara Accord" was signed. The agreement settled all remaining disputes arising from the transfer of populations and the value of properties left behind, paving the way to peaceful relations for the coming decades[9].

1.3 Years of Cooperation

Greece and Turkey have shown great sense of cooperation starting in 1930. Just as Turkey needed peace and tranquility in its foreign relations to ensure internal development, so did Greece in order to provide stability and order within its boundaries. The two states were willing to secure the *status quo* and develop better relations with each other, resulting in Greek and Turkish leaders paying visits to their Aegean neighbors. On October 30, 1930 Greece and Turkey signed the "Treaty of Neutrality, Conciliation and Arbitration" as well as a protocol providing for parity of naval armaments and a commercial convention. The first two articles of the treaty ensured neutrality in its broadest sense in times of conflict. The following ones mainly focused on how the possible disputes between the two would be settled, calling for procedures of

[8] Murat Hatipoğlu. (1996), pp. 56-58.
[9] Baskın Oran. *Türk Dış Politikası Kurtuluş Savaşından Bugüne Olgular,Belgeler, Yorumlar,* (Istanbul: Iletişim, 2001), pp.342-346. For further information and details of the settlement of the problems that arose from the population exchange see İsmet İnönü, *Hatıralar,* (Ankara: Bilgi, 1985).

conciliation if the dispute could not be settled by diplomatic means. As for naval forces, the parties were obliged by the Protocol not to build or purchase new warships without informing each other six months beforehand[10].

Following the Neutrality Treaty several agreements were reached between Greece and Turkey together with visits at prime ministerial level. Most importantly, on September 14, 1933 "Pact d'Entente Cordial" (The Pact of Cordial Friendship) was signed, the 5-article-long pact guaranteeing the inviolability of their borders and committing them to consult each other on matters of common interest on international problems. In addition, the pact envisaged the sole representation of Greece and Turkey in relevant international conferences[11]. During his visit to Athens in November the same year, Turkish Minister of Foreign Affairs, Tevfik Rüştü Aras, declared that Greece and Turkey have almost become one country with the signing of this pact[12]. The rapprochement was taken one step further with the Balkan Pact, which was concluded in March 1934, between Greece, Turkey, Yugoslavia and Romania. The terms of the pact obliged the parties to guarantee

[10] The Treaty of Neutrality, Conciliation and Arbitration provided for a general system of procedures for the pacific settlement of disputes between Greece and Turkey; the applicability of the terms of the treaty was discussed during the International Court of Justice settlement related to the Aegean Continental Shelf Case in paragraphs 91-93. Article 3 of the Treaty follows: "The high contracting parties commit themselves to submit to the conciliation procedures that were envisaged in Articles 8-19 hereinafter, if problems that divide them can not be solved through ordinary diplomatic means. In case conciliation procedures fail, a judicial decision will be sought, in compliance with Articles 20-23 of the present treaty. If the parties do not agree to apply to an arbitral tribunal in accordance with Article 55 and succeeding articles of the International Convention for the Pacific Settlement of Disputes of 18 October 1907 or any other agreement that exists between them." The whole text of the Treaty can be found in Hulusi Kılıç, *Bilateral Agreements, Essential Documents and Declarations between Turkey and Greece since the Proclamation of the Turkish Republic Ministry of Foreign Affairs of the Republic of Turkey*, Deputy Directorate General for Maritime and Aviation Affairs, (Ankara: 2000), pp. 55-62 and in Appendix B.

[11] Suat Bilge. (2000), p. 169. The whole text of The Pact of Cordial Friendship can be found in Hulusi Kiliç. (2000), pp. 83-84 and in Appendix C.

[12] Alexis Alexandris. "Turkish Policy towards Greece during the Second World War and Its Impact on Greek-Turkish Détente", *Balkan Studies,* Vol. 23 No. 1 (1982) cited in Tozun Bahcheli. (1990), p. 14.

the frontiers in the event of aggression against any of them, and to consult with one another in the event of any threat to peace in the region[13].

1.4 Over the Waters of the Aegean

Meanwhile in the Aegean Sea, Greece had passed some decrees regarding its sovereignty over the waters of the Aegean. The Royal Decree of 6/18 September 1931 defined the limit of its territorial waters to be 10 nautical miles for the purposes of aviation and control above the sea[14]. This act in fact did not specify the extent of the territorial sea but merely stated that the state exercises complete and absolute sovereignty over the airspace above its territory, which included the territorial sea as well.

Concerning the territorial sea, the Greek Law No. 235 of 17 September 1936 fixed the extent of the territorial sea at 6 nautical miles from the coast[15]. However, it also included an exception to this 6 nautical mile limit by specifying that "it is without prejudice to provisions in force concerning special matters[16], with respect to which the territorial zone shall be delimited at a distance either larger or smaller than six nautical miles". In light of these developments Turkey did not intend to exercise such a policy or show a

[13] The Balkan Pact was genuinely intended to involve Bulgaria too, in order to prevent Bulgaria's territorial claims against Greece and Turkey, and also hoped to discourage anticipated pressures from Germany or Italy to penetrate and control the Balkans. For details see William Hale. *Turkish Foreign Policy (1774-2000,* (London: Frank Cass, 2000), pp. 61-62.

[14] Greek Official Gazette 1931, No. 325, p.2589 cited in Deniz Bölükbaşı. *Turkey and Greece The Aegean Disputes, A Unique Case in International Law,* (London: Cavendish, 2004), pp. 126-127.

[15] Greek Official Gazette 1936, No. 325, p.2387 cited in Deniz Bölükbaşı. (2004), p. 127.

[16] The "special matters" mentioned in this statement refers to the 10 nautical mile air space that the Greek Government had declared in September 1931. Greece wanted to ensure that new laws on the width of the territorial sea would not affect the width of the air space above.

reaction to the Greek legislation in the Aegean Sea at the time. On the issue of territorial waters, the Turkish government did not take any action for the next 30 years until the Turkish government promulgated Law no. 476 of 15 May 1964 on "Territorial Waters of the State". It established 6 nautical miles territorial sea, however, also stipulated that, in the case of states claiming territorial sea beyond 6 nautical miles, Turkey would define its width of the territorial sea on the basis of reciprocity[17].

1.5 World War II and the Western Alliance

During World War II, although Greece resented the fact that Turkey remained neutral instead of coming to Greece's aid under the terms of the Balkan Pact, several acts of Turkish friendship and support ensured the continuation of the peaceful relations. Volunteers were organized among the ethnic Greek community in İstanbul, food was sent across the Aegean to deal with starvation in Greece and Allied aids were allowed to pass through Turkish territory as well as permitting the escapees from Greece[18]. In addition, Turkey did not show a negative attitude when the Dodecanese were given to Greece in 1947[19].

[17] Law no. 476 of 15 May 1964. As a result of this application of the reciprocity principle, the extent of the territorial sea in the Black Sea was extended to 12 nautical miles as a response to 12 nautical mile-limit claims of USSR, Romania and Bulgaria. In the Mediterranean, Syria, Lebanon, Israel, Egypt, and Libya, had accepted 12 miles territorial sea and is also responded equally by the Turkish government. On the other hand, the width of the territorial sea remained 6 nautical miles in the Aegean since Greece had accepted 6 nautical miles, which did not necessitate the employment of the principle of reciprocity by the Turkish state in this respect.

[18] Tozun Bahcheli. (1990), pp. 15-16.

[19] The Dodecanese had been under Italian sovereignty since the Tripoli War in 1912, but was given to Greece in the end of the World War II. The islands were offered to Turkey by the British during the World War II if it was to join the Allied Powers; however Turkey had refused to enter the war. In the process of

The relations of Greece and Turkey were still cooperative in the aftermath of the World War II with the new world order. The security considerations of the two Aegean states became identical against the Soviet Union, connecting them to the Western Alliance. Both states became beneficiaries of the Truman Doctrine, sent forces to Korea, and joined NATO in 1952. Until the incidents broke out in the late 1950's in Cyprus, Greece and Turkey have shown great collaboration in their bilateral relations.

1.6 Decline of Relations

The relations between Greece and Turkey had deteriorated incrementally during the second half of the 20th century. The first disagreements started with ethnic conflicts in Cyprus, followed by several discords over the Aegean Sea. Not been solved since half a century, these issues remain to be the main source of conflict between the two Aegean states.

1.6.1. Cyprus

Cyprus had been under British administration since 1878, where two distinct national peoples lived together, namely the Muslim Turkish Cypriots and the Christian Orthodox

ceding the islands, Greece had not refrained from demanding Gökçeada (Tenados) and Bozcaada (Imbros) and organizing demonstrations for this purpose. For details see Murat Hatipoğlu. (1996), pp. 233-250.

Greek Cypriots. Britain had explicitly recognized the two communities in the island through its government statements. As early as 1947 when the new Archbishop Leontios of Paphos was being elected, campaigns and demonstrations for *Enosis* (uniting the island with Greece) started on the island by the Greek Cypriots[20]. The Greek demand to unite the island with mainland Greece was a part of the *Megali Idea* and it was supported by the Orthodox Church[21]. In 1954, the Greek government applied to the United Nations for the right to self-determination to be given to the people of Cyprus, nevertheless, the UN General Assembly then decided not to discuss the situation[22]. In 1960, the two communities on the island negotiated and signed the Zurich and London Agreements creating the independent state of Cyprus, with Britain, Greece and Turkey being guarantor powers of the state of affairs on the island[23].

The Greek Cypriots however regarded the establishment of the Republic as a step towards the ultimate aim of enosis, and soon started to destroy the balances created by the 1960 agreements. The Greek Cypriots resorted to violence in 1963 for this purpose, expelling the Turkish Cypriots from all government organs by pressure. Until 1974, when Turkey intervened to the island in accordance with its Treaty rights and obligations, massive human rights violations happened against the Turkish Cypriots,

[20] Murat Hatipoğlu. (1996), pp. 310-311.

[21] According to K. C. Markides, Enosis was a local movement representing the heir of the Hellenic-Byzantine Empire and it was initiated by the church. As the rivalry between the church and the communists ended with the end of World War II, church extended its influence in Greece and the idea of Enosis is embraced by the Greek people. See K.C. Markides. *The Rise and Fall of the Cyprus Republic,* (New Haven: Yale University Press, 1977), pp.11-14.

[22] The Greek appeal to the United Nations was rejected on the basis of the UN Charter Article 2(7), the principle of non-intervention to internal affairs of states. For details see Fahir Armaoğlu. *Kıbrıs Meselesi 1954-1959,* (Ankara: Sevinç, 1963), pp. 70-94; Nancy Crawshaw. *The Cyprus Revolt,* (London: William Cloves and Sons, 1978), pp.83-89.

[23] For further information on the establishment of the Republic of Cyprus and the terms of London and Zurich Agreements see Necati Ertekün, *The Cyprus Dispute and The Birth of the Turkish Republic of Northern Cyprus*, (Oxford: University Press, 1984), pp.3-9.

rendering some 30.000 people homeless[24]. After the Greeks attempted to takeover Cyprus through a *coup d'état* organized by the junta in Athens and its collaborators in Cyprus, Turkey intervened in the island in order to put an end to the atrocities that were being committed against the Turkish people[25]. Since then, the island is divided into two; the Greek Cypriots residing in the South and the Turkish on the North[26]. On 13 February 1975, under the leadership of the president of the Turkish Cypriot Administration Rauf Denktaş, Turkish Cypriots declared the Turkish Federated State of Cyprus. Having been denied all their rights under the 1960 Constitution, on 15 November 1983, the Turkish Cypriot Assembly approved unanimously the declaration of independence and the establishment of the Turkish Republic of Northern Cyprus (TRNC)[27].

This situation beginning in the late 1950's totally changed the course of Greek-Turkish relations that had been going on peacefully about thirty years. The Cyprus dispute did not only pose a problem itself, but also restrained the bilateral relations of the two states especially on the Aegean issues as well as Turkey's membership to the European Union[28].

[24] Hakkı Akalın. *Turkey and Greece, On the Way to Another War?,* (Ankara: 1999), pp. 219-221.
[25] After the intervention to the island, Turkey was regarded as an aggressor by the international community. For further details See the United Nations Security Council Resolutions 541 and 550 and www.mfa.gov.tr
[26] Although Turkey had acted under the terms of the Treaty of Guarantee, the UN General Assembly Resolution 3212 of 1 November 1974 mentioned Turkey as an occupier and stated that the Greek Cypriot Administration was the only legitimate government on the island.
[27] For details on the political structure of TRNC, see Clement H. Dodd. *The Political, Social and Economic Development of Northern Cyprus,* (Cambridgeshire: The Eothan Press, 1993), pp.103-218.
[28]For peace efforts on the island, see the Report of the Secretary General on his Mission of Good Offices in Cyprus, 2004/437 (2004).

1.6.2 Continental Shelf Dispute

One other problem, which forms the central question of this thesis, arose from petroleum research activities and licenses in the Aegean Sea in the 1970's. There had been no delimitation of continental shelf in the Aegean Sea when in 1963 Greece started to conduct research work and granted exploration licenses in the Aegean outside Greek territorial waters. Turkey, on its part, started its first seismic research activity in the Aegean in 1968. Along with intensifying Greek exploitation activities, Turkey in 1973 granted licenses to the Turkish Petroleum Corp (TPAO). As more permits were granted by the two Aegean states to conduct research on the Aegean, both states started to question the validity of the permits issued by the governments.

This matter soon became very intense and problematic regarding the delimitation of the continental shelf in the Aegean. In addition to the other problems in the Aegean and the Cyprus dispute, the issue of continental shelf became one of the most intractable matters that have been left unresolved between Greece and Turkey and directly affecting the bilateral relations of the two.

CHAPTER TWO

AEGEAN SEA

The Aegean Sea lies at the core of most of the political relations between Greece and Turkey. It is not only a sea that divides the two mainlands, but it is also a main source of conflict dividing the two states in several political, economic and legal matters. The Aegean Sea itself needs to be analyzed in detail geographically as well as legally so as to have a better understanding of the conflict between these two neighboring Aegean states. In this respect, the outstanding nature of the Aegean Sea and the way its natural characteristics are regarded by Greece and Turkey are of outmost importance[29].

[29] For socio-economic characteristics and the underwater structure of the Aegean Sea and the Aegean islands, see Yücel Acer. *The Aegean Maritime Disputes and International Law,* (Wiltshire: Ashgate, 2003), pp. 5-16.

2.1 Geographical Factors

Maritime boundary issues between Greece and Turkey are very much problematic due to the special features of the Aegean Sea. Having a very unique political geography, the sea itself creates difficulties in delimitation because of its narrow width and the existence of many islands, islets and rocks[30].

The Aegean Sea forms part of the Mediterranean Sea with a total surface of maritime areas of 101.321 sq nautical miles (187.647 sq kilometers)[31]. The sea is bordered by the coasts of Greece and Turkey, both adjacently and oppositely. Greek coasts to the Aegean are 1500 nautical miles (2750 kilometers) long, excluding the islands; whereas the Turkish coasts to the Aegean are nearly of 1300 nautical miles (2400 kilometers). The Aegean Sea has approximately 350 nautical miles length and 100-200 nautical miles width, from east to west. It is bounded by Greece in the West and by Turkey in the east, and by both in the North, mainly by the Greek coasts. At the south, the limit of the Aegean Sea can be described by a line joining the southwestern coast of Turkey and southwestern coast of Greece: the Akyar Cape, Northern Rhodes, the islands of Karpathos, Crete, Andikithira and Southeastern Peleponnesse in mainland Greece[32]. This semi-enclosed sea therefore gives no direct access to any other state.

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[30] Yüksel Inan and Yücel Acer. *The Aegean Disputes* in Ali Karaosmanoğlu and Seyfı Taşhan (ed.s), *The Europeanization of Turkey's Security Policy: Prospects and Pitfalls,* (Ankara: Foreign Policy Institute, 2004), p.1.

[31] 1 nautical mile equals to 1, 852 kilometers, as a universally accepted measurement in the law of the sea.

[32] Deniz Bölükbaşı. (2004), pp. 87-88. There does not exist an internationally agreed limit of the Aegean Sea, however, for hydrographic purposes, in a study carried out in 1986 by the International Hydrographic Organization (IHO) the Aegean Sea was defined as described above.

The Aegean Sea includes approximately 3000 different islands, islets and rocks, mostly under Greek sovereignty, of which around 100 are inhabited[33]. Although many are small, a number of Greek islands of various sizes are located of the eastern shores of Anatolia[34]. They are dispersed all over the Aegean; nevertheless the islands can be grouped under five categories: the North Sporades, the Cyclades, the Strait Region Islands, the Saruhan Islands and the Menteşe (Dodacanese) Islands[35]. The last three groups of islands can also be named as the "Eastern Aegean Islands", located in close proximity to the Turkish shores in the east part of the Aegean Sea[36]. The number of the Eastern Aegean Islands is considerable; nowhere else do foreign-controlled islands and their territorial sea cover nearly 85% of a long mainland coastline. Some of the islands under Greek sovereignty are as close as few nautical miles off the shoreline, resulting in Turkey's coast to the Aegean Sea to be encircled to an excessive extent by the Greek islands and their adjacent territorial seas[37].

Considering the proximity of the Greek islands to mainland Turkey as well as the extraordinary configuration of the sea, the Aegean constitutes a special circumstance for purposes of maritime delimitation. Due to its complex geography and singular structure, it not only constitutes a unique sea that poses difficulties in maritime delimitation, but it

[33] For governing treaties of the Aegean islands see Jon M. Van Dyke "An Analysis of the Aegean Disputes under International Law", *Ocean Development and International Law*, Vol. 36:63-117, (2005), pp.64-69.
[34] Mark B. Feldman. *International Maritime Boundary Delimitation: Law and Practice from the Gulf of Maine to the Aegean Sea*, in Seyfi Taşhan (ed.), *Aegean Issues: Problems – Legal and Political Matrix Conference Papers,* (Ankara: Foreign Policy Institute, 1995), pp. 15-17.
[35] Yüksel İnan. *The Aegean Disputes and Efforts to Solve Them,* (forthcoming), p. 1.
[36] Yüksel İnan. (forthcoming) p. 1.
[37] Deniz Bölükbaşı. (2004), p. 90.

also creates such an odd situation that virtually no such peculiar configuration exits in other parts of the world[38]. This situation in turn directly affects various maritime delimitation difficulties in the Aegean Sea.

2.2 Bilateral Problems in the Aegean Sea

Greece and Turkey has many problems regarding maritime delimitation in the Aegean Sea. All these problematic issues derive from the fact that the Aegean Sea forms an exception to all common rules of international law. International agreements form an important part of the sources of international law. Four Conventions were signed in relation to the law of the sea in 1958: Convention on the High Seas; Convention on the Territorial Sea and the Contiguous Zone; Convention on Fishing and Conservation of the Living Resource of the High Seas and Convention on the Continental Shelf. In 1982, the Convention on the Law of the Sea was signed which largely superceded the earlier Conventions. Although all issues of the law of the sea are covered in the these UN Conventions that were signed in 1958 and 1982 respectively, the issues related to the Aegean Sea needs to be examined under the area of "special circumstances" due to its exceptional geographical characteristics.

The problematic matters in the Aegean Sea can be classified as:

- The delimitation of the territorial sea
- The delimitation of the continental shelf
- The air space issues

[38] See Appendix D for the map of the Aegean Sea.

- Issues related to the demilitarized statues of Eastern Aegean islands
- The uncertainty over the status of certain geographical features in the Aegean Sea[39].

This research will only deal with the issue of continental shelf, however in order to have a better grasp on the issue, it is also important here to mention briefly about the delimitation of the territorial sea in the Aegean Sea.

The territorial sea is the maritime area adjacent to a coastal state where the state can exercise full sovereignty over these waters and the airspace above, just as over its land territory. Article 3 of the UN Convention on the Law of Sea of 1982 provides that "Every state has the right to establish the breadth of the territorial sea up to a limit not exceeding 12 nautical miles, measured from the baselines determined in accordance with this Convention"[40].

The precise delimitation of territorial sea is very important in defining the continental shelf areas in the Aegean. This is because; the concept of the continental shelf is defined as composing the seabed and subsoil of the submarine areas that extend beyond the territorial sea, which is measured from the baselines[41]. Thus and inevitably, the length of

[39] For further information on the bilateral disputes between Greece and Turkey in the Aegean, see Yüksel Inan and Yücel Acer. (2004).
[40] United Nations Convention on the Law of the Sea, 1982, Article 3. The whole text of the 1982 Convention can be found in E.D. Brown. *The International Law of the Sea,* Vol. II, (Aldershot: Dartmouth, 1994) and www.un.org/Depts/los/index.htm, (The United Nations website for the Division for Ocean Affairs and the Law of the Sea).
[41] See UN Convention on the Law of The Sea 1982 Article 76/3, for a definition of continental shelf. See Appendix E for the relevant provisions of UNCLOS.

the territorial sea directly affects the areas that would be left to be called as continental shelf.

As early as 1936, Greece had fixed the extent of its territorial seas at 6 nautical miles, including the Aegean. Then in 1964, the Turkish government declared 6 nautical miles territorial sea, stipulating that in relation to those states claiming territorial sea beyond this limit, Turkey would determine its territorial sea on the basis of reciprocity. Since then the two Aegean states exercise a 6 nautical mile breadth of territorial waters. Nevertheless, after ratifying the UN Convention on the Law of The Sea in 1995, the Greek government also stated that "Greece has an alienable right to extend its territorial sea up to 12 nautical miles at any time"[42].

Under the present 6 nautical mile breadth of territorial sea, Greece holds nearly 43.5% of the waters of the Aegean Sea whereas for Turkey this percentage is 7.5. Should the territorial sea be extended to 12 nautical miles as Greece advocates, the Greek territorial sea will increase to 71.5% and Turkish territorial sea to only 8.7%, turning the Aegean into a Greek sea[43]. Leaving very little area for Turkish territorial waters and for Turkish passage, this situation also affects the amount of high seas left in the Aegean Sea, leaving the amount of high seas in the whole Aegean approximately to 20%. Besides, any change in the extent of the territorial sea on the Greek side, would considerably decrease the areas left to be claimed as continental shelf. Thus, it is vital that a precision

[42] Greek Parliament minutes, 31 May 1995 cited in Bölükbaşı. (2004), p. 134.
[43] Hakkı Akalın. (1999), p. 145.

on the territorial sea be maintained in the first place, in order not to affect the continental shelf issue afterwards.

Nevertheless, considering its alienable right to extend its territorial sea to 12 nautical miles, Greece simply ignores the dramatically decreased amount of areas left for high seas as well as for Turkish territorial seas. Some scholars even argue that the territorial sea claims in some parts of the contested Eastern Aegean should be rolled back to 3 nautical miles in order to provide the navigational and overflight freedoms that are so important to Turkey and to third states[44].

The fact that Greece disregards that there exists a problem in the delimitation of the territorial sea, even complicates the issue of continental shelf. The Greek government refuses that there exists any other problem than the continental shelf in the Aegean, whereas Turkey insists that the sum of all disputes in the Aegean between the two states should be dealt together, in order to have a solid and long-lasting solution for each of them.

[44] Jon M. Van Dyke. "An Analysis of the Aegean Disputes under International Law", *Ocean Development and International Law*, 36:63-117, (2005), pp. 87-88.

CHAPTER THREE

CONTINENTAL SHELF AS A LEGAL CONCEPT

Neither a practical nor a legal definition existed for the concept of continental shelf at the beginning of the 20th century. The continental shelf started to be debated years after the question of the extension of the territorial sea was discussed in the international community and only after the exploitation of the resources on the seabed and subsoil were on the agenda.

3.1 Development of the Legal Concept of Continental Shelf

By the year 1930, pressure from a considerable number of states to extend their jurisdiction seawards was mounting, reflected in the Hague Conference for the codification of International Law. Many states were in favor of a wider zone of territorial sea; however this was not the case in continental shelf. Since resources on the seabed and subsoil were not drawing the attention of states and there was no concept of

continental shelf in the 1930‘s, the first pronunciation of a continental shelf happened only after the World War II.

On 28 September 1945, then president of the United States Harry Truman issued a proclamation declaring that the US government “regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control”[45]. The continental shelf was further explained by a press release of the government stating that “generally submerged land which is contiguous to the continent and which is governed by no more than 100 fathoms (200 meters) of water is considered as the continental shelf”[46].

The Truman Proclamation was the initial point in the development of the legal concept of the continental shelf, as it provided a model for a succession of similar claims by other states. Numerous unilateral acts with a variety of scopes and content were declared by other states anxious to take advantage of the new practice initiated by the US government. Nevertheless, no provisions for delimitation with neighboring states were envisaged.

In early 1950’s, for a definite delimitation of the continental shelf, the International Law Commission had only mentioned a zone of seabed “where the depth of the superjacent

[45] Truman Proclamation No. 2667, 10 Fed. Reg. 12303 cited in *International Boundary Cases: The Continental Shelf* (Cambridge: Grotius, 1992) p. 2.
[46] US Department of State Bulletin, Vol. 13, p. 485 cited in *The Law of the Sea: The Definition of the Continental Shelf,* (New York: United Nations, 1993), p. 1.

waters admits of the exploitation of the natural resources of the seabed and subsoil"[47]. Having no reference to a fixed depth, the approach became unfeasible with regards to the rapid development in technology. In fact, it can be said that every delimitation dispute between states has arisen along with the availability of technology to exploit the seabed and the subsoil, as it is the case in the Aegean Sea continental shelf dispute.

3.2 1958 Convention on the Continental Shelf

The United Nations Conference on the Law of Sea that was held in 1958, along with other issues of the law of the sea, attempted to formulate an agreed legal definition of the continental shelf, since delegates were reluctant to accept uncertain criteria as "exploitability" for a description[48]. A compromise was reached including both the International Law Commission's exploitability criteria and more precise depth criteria in the definition of the continental shelf. The text of 1958 Geneva Continental Shelf Convention Article 1 gives the definition as follows[49]:

> For the purpose of these articles, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

[47] *International Boundary Cases: The Continental Shelf* (1992) p. 3.
[48] *International Boundary Cases: The Continental Shelf* (1992) p. 3.
[49] The complete text of 1958 Geneva Continental Shelf Convention can be found in www.oceanlaw.net and Appendix F.

This definition contained the criteria of adjacency to the coast and of exploitability, however was still regarded as imprecise and open-ended nature in terms of delimitation. Moreover, as for the debates on effective control and exploitation, the coastal state rights over the shelf were not based on notions of occupation or expressed claims made by states. Thus, Article 2 of the Geneva Convention proposed that states had this right *ipso jure:*

> 1. The coastal state exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
> 2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal state does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.
> 3. The rights of the coastal state over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

In addition, in account of neighboring states, the Convention stated in Article 6 that:

> 1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.
> 2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

This article is important because of the fact that it gives reference to three elements in case of conflict in the delimitation of the continental shelf: firstly a boundary settled by agreement; secondly a boundary drawn using the median line or the principle of equidistance; and thirdly in cases of special circumstances, another boundary line

justified by these special circumstances. As stated in Conference drafts, this meant that the equidistant rule was the general rule; however in special circumstances another justified boundary line will be the basis for delimitation as necessitated by any exceptional configuration of the coast, as well as the presence of islands or of navigable channels[50]. Therefore the special circumstances element would prevail over the equidistance principle when such exceptional characteristics exist.

The legal concept of continental shelf laid down in 1958 was first considered by the ICJ in 1969, with the *North Sea Continental Shelf Cases*. When the Court was asked to lay down the principles of international law applicable to the delimitation of the continental shelf in the North Sea between the Netherlands, Germany and Denmark; it also used the term "natural prolongation". This situation in turn had implications on the subsequent jurisprudence, changing the focus from the water depth and exploitability criteria to the geological characteristics of the seabed[51]. In addition, it referred to an element of proportionality for delimitation between the extent of the continental shelf areas appertaining to that state and the length of its coast measured in the general direction of the coast line[52].

In the following years, the importance of natural prolongation decreased, particularly because of those states that deal with a very limited natural continental shelf extension. On the other hand, the Court's statements on the *North Sea Continental Shelf Cases*

[50] E. D. Brown. (1994), p. 162.
[51] *International Boundary Cases: The Continental Shelf,* (1992), pp. 4-5.
[52] *International Boundary Cases: The Continental Shelf,* (1992), pp. 11-12. The Case will be dealt with in detail in Chapter Seven.

stressing other factors to be taken into account gained more importance. Those factors, including the configuration of the coast, the psychical structure and resources of the shelf and the principle of proportionality were seen more significant for the delimitation of the continental shelf in accordance with equitable principles. The Court had viewed delimitation only by the criteria of equidistance as a mistake and thus wanted to avoid it by resorting to these aspects[53].

In the UK/France Continental Shelf Case of 1977, the arbitration court once again asserted the consideration of special circumstances in delimitation of the continental shelf. The fact that the Channel Islands of Britain being so close to the French mainland coast was regarded as a special circumstance[54]. Thus, the Court gave its award in view of both Article 6 of the 1958 Convention and on customary law; regarding both having the same goal, the establishment of a boundary in accordance with equitable principles[55].

3.3 1982 United Nations Convention on the Law of the Sea

The need for an internationally agreed legal definition for continental shelf delimitation started to be felt in several international circles as well as in the Third United Nations

[53] *International Boundary Cases: The Continental Shelf,* (1992), pp. 14-15.
[54] This arbitration court award supports the official Turkish view; the judgment is dealt with in Chapter Six.
[55] Donat Pharand and Umberto Leanza (ed.s), *The Continental Shelf and the Exclusive Economic Zone* (Dordrecht: Martinus Nuhoff Publishers, 1993) pp. 105-112. For details of the Court decision, see Jonathan I. Chareny and Lewis M. Alexander, *International Maritime Boundaries Vol. II,* (Dordrecht: Martinus Nijhoff Publishers, 1996), pp. 1735-1754.

Conference on the Law of the Sea[56]. It was generally agreed that an international regime needed to be established for the deep seabed and it was necessary to overcome the vague points and uncertainties of the definition for the outer limits of the shelf made in the Geneva Convention on the Continental Shelf in 1958[57].

In line with these considerations the adopted text in the end of the Conference gave a more precise definition and adjusted methods for delimitation. Article 76(1) of the 1982 Convention on the Law of the Sea contained the following new definition of the continental shelf:

> The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance[58].

An important point is taken into account in this provision: it does accept only the link of the continental shelf with the physical fact of natural prolongation, but it also introduces the criteria of distance regardless of whether there exists a natural prolongation in the psychical sense or not, thus enabling states to claim a continental shelf up to 200 nautical miles[59]. As for delimitation between states, Article 83/1 reads as follows:

> The delimitation of the continental shelf between States with opposite or adjacent coasts shall be affected by agreement on the basis of international law, as

[56] After the first Conference on the law of the sea in 1958, a second one concerning the territorial seas was held in 1960; however it failed to reach any agreements. A third one was convened in 1973, and the discussions lasted until 1982 when the text of the Convention on the Law of the Sea was put in UN General Assembly vote and accepted. See Appendix G for the list of member states to UNCLOS.
[57] *The Law of the Sea: The Definition of the Continental Shelf*, (1992), pp. 1-2
[58] As defined by Paragraph 3 of the Article 76, continental refers to the submerged prolongation of the land mass of a coastal state and consists of the seabed and subsoil of the continental shelf, the continental slope and the continental rise, but does not include the deep ocean floor with its oceanic ridges. See Appendix H for illustration of continental shelf, margin, slope and rise geologically.
[59] *The Law of the Sea: The Definition of the Continental Shelf,* (1992), p.2

> referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution[60].

The more detailed provisions of Article 6 of the 1958 Convention were therefore abandoned for the vague instruction to adjudicators to achieve an equitable solution. The ICJ stated in one of its related cases that, "The principles and rules applicable to the delimitation of continental shelf areas are those which are appropriate to bring about an equitable result"[61]. Consequently, the principle of equity has become of more importance with regards to equidistance and any other method of delimitation. Since the 1982 Convention, the Court regards a list of factors and circumstances as relevant to the application of the principle of equity such as adjacency; coastal configuration; disproportionality; distance; enclavement; equidistance; interests of third states in the area; natural prolongation; past conduct of the parties in the area, proportionality; reduced affect for islands and unity of single state management have all been observed in the decisions of the ICJ in the application of the principle of equity in continental shelf delimitation[62]. Among these, nearly half of these factors need to be considered in the case of delimitation of the continental shelf in the Aegean.

In sum, there is no single rule applicable to all delimitation cases. Nonetheless, the manner in which the 1958 and 1982 Conventions are interpreted along with customary international law, points to a single practice that is to be affected "…by agreement, in

[60] Article 38 of the Statute of the ICJ relates to the sources of international law; its first paragraph follows: "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. "

[61] ICJ Reports, Tunisia /Libya Case, 1982, Para. 50.

[62] *International Boundary Cases: The Continental Shelf,* (1992), pp. 46-47.

accordance with equitable principles and taking into account of all relevant circumstances in order to achieve an equitable solution"[63].

Today, Greece is a party to the 1958 Continental Shelf Convention and the 1982 Convention on the Law of the Sea whereas Turkey is not, since it did not ratify either of the two Conventions. Nevertheless, nowadays most of the provisions of the 1982 Law of the Sea Convention are regarded as customary international law, with a binding effect on all states, due to a wide acceptance in the international community and considerable amount of state practice and ICJ judgments approving so.

[63] Libya/Malta Continental Shelf Case 1985, para.11

CHAPTER FOUR

CONTINENTAL SHELF DISPUTE BETWEEN GREECE AND TURKEY

The problem in the Aegean is largely to do with the special configuration of the sea that does not give way to the direct application of the legal norms. It is a semi-enclosed sea whose east-west length is shorter than 400 nautical miles, and it almost gives no chance in all areas for delimitation of the shelf areas to be derived from the notion of natural prolongation. Thus, continental shelf has been an ongoing dispute. When the right to make exploitations for natural resources in this area is the case, the issue gains more importance considering the special geographic characteristics that are equally important to both Greece and Turkey in terms of strategic, economic and political interests.

4.1 Historical Background of the Incidents (1963-1976)

The continental shelf dispute between Greece and Turkey has a bearing on the overall equilibrium of rights and interests in the Aegean. Although the Lausanne Treaty of 1923 had the intention to provide the equilibrium, the concept of continental shelf did not exist at the time of the settlement. Once the technology developed so as to make research on the seabed and subsoil, and the two coastal states acquired the capabilities to exploit the continental shelf, the dispute arose as to who will have the jurisdiction of the area.

The Aegean continental shelf not being delimited through an agreement between Greece and Turkey, the first conduct in the area was realized in 1963. That year, Greece conducted research work and granted exploration licenses in the Aegean outside its territorial waters. The licenses covered the maritime areas and their subsoil around Rodos (Rhodes) and Kerpe (Karpathos) islands in the southern Aegean[64].

From 1969 onwards, Greek exploration and exploitation activities spread to off-shore areas in the northern and eastern Aegean. Three foreign petroleum companies were granted licenses by the Greek government to explore the areas in the northern Aegean, outside the limits of the territorial sea of the Limni (Lemnos) Island. In 1970, this conduct was furthered around the islands of Sakız (Chios), Midilli (Lesvos), Limni (Lemnos) and Semendirek (Samothrace), and drilling activities were carried out by

[64] Deniz Bölükbaşı. (2004), p. 239.

Greece mainly in Thessalonica Bay, and off the coasts of Limni (Lemnos) and Taşoz (Thasos)[65].

On the other hand, first seismic activities in the Aegean on the part of Turkey started in 1968. As a response to intensified Greek activities in the area, in 1973 Turkey decided to grant licenses to the Turkish State Petroleum Company (TPAO). A government decision in this respect was published in the Turkish Official Gazette granting the TPAO the right to execute petroleum exploration activities in 27 regions in the Aegean continental shelf[66]. These areas did no go beyond the median line between the Turkish and Greek mainlands.

In the first half of 1974, Turkey started to carry out magnotemetric research in the Northern Aegean, within the areas covered by the permits that had been granted. In June and July the same year, the Turkish government granted additional oil exploration concessions to the TPAO[67]. These new permits extended the area to be exploited further to the west of Greek islands; however it still did not pass the median line. Moreover, other permits were granted in the southern Aegean to the North and North West of the islands of Nicaria and the Dodecanese, including the west and east of Rhodes[68]. In May 1974 and February 1976 Turkey put this decision into practice by sending survey ships

[65] Letter of the Permanent Representative of Turkey to the Security Council, 18 August 1976. UN Doc. 8/12181, cited in Deniz Bölükbaşı. (2004), p. 239.
[66] Turkish Official Gazette of 1 November 1973 indicated on a map the 27 oil concessions granted to the TPAO in accordance with Decision of the Turkish Government. See Appendix I for map.
[67] Turkish Official Gazette of 6 June 1974 and 18 July 1974. See Appendices J and K for maps.
[68] Deniz Bölükbaşı. (2004), pp. 240-241.

to conduct magnetometric and seismic tests along the western limits of the concession areas[69].

Greece soon started to question the validity of the permits issued by the Turkish government and reserved the sovereign rights of Greece over the continental shelf of the islands for the purpose of exploration and exploitation. The Greek government alleged that the area that the permits covered intruded the continental shelf of certain Greek islands; namely, Samothrace, Lemnos, Ag. Efstratios, Lesvos, Chios, Psara and Andipsara[70]. From this moment onwards, tensions gradually arose between the two Aegean states and the period between 7 February 1974 and 9 August 1976 was marked by mounted tension and intense diplomatic exchanges, which strived for improvement but resulted in impasse.

4.2 Negotiations for a Settlement

In order to reach a settlement and ameliorate relations in the Aegean the two neighboring states engaged into a series of talks and meetings. In this period, twenty one Verbal Notes were exchanged between Greece and Turkey. Meetings were held in Prime Ministerial and Foreign Ministerial levels in 1975 and two expert meetings were held in

[69] Ahnish, F. A. *The International Law of Maritime Boundaries and the Practice of States in the Mediterranean Sea,* (Oxford: Clarendon Press, 1993), pp. 358-359.
[70] Deniz Bölükbaşı. (2004), p. 241.

Bern in 1976[71]. These meetings resulted in the signing of the Bern Agreement on 11 November 1976, which concluded the negotiations.

4.2.1 Talks between Governments

In its three notes of 7 February 1974, 24 May 1974 and 14 June 1974, Greece reserved its position of questioning the validity of Turkish permits for exploitation in the concerned areas, identifying the areas as Greek continental shelf and did not oppose the dispute to be settled along with international law that was codified by the 1958 Geneva Convention on the continental Shelf. In reply, Turkey declared that, the Greek islands lying very close to the Turkish coast do not possess their own continental shelf and as for the delimitation, it was willing to solve the matter within the framework of international law[72]. When Greece protested the new exploration permits issued by the Turkish government of 18 July 1974, Turkey stated that the areas covered were part of the Turkish continental shelf and added that a mutually accepted solution regarding the delimitation of the concerned areas should be reached through negotiations.

On 27 January 1975, Greece proposed that the differences over the applicable law be referred to the ICJ. In response, with its Verbal Note of 6 February 1975, Turkey stated that it was favorably considering the Greek government's proposal to submit the matter

[71] All official correspondence exchanged between Greece and Turkey including letters and notes can be found in *Aegean Sea Continental Shelf Case (Greece v. Turkey),* International Court of Justice Pleadings, Oral Arguments, Documents, (Netherlands: 1980), pp.21-60.
[72] Turkish Note Verbale 27 February 1974 and 5 June 1974.

to the ICJ, and to elaborate the terms under which specific matters shall be referred; the Turkish government proposed high-level talks to be initiated between the two governments. In addition, Turkey pointed to the fact that because of the political nature and the vital importance of the subject, it was essential for these talks to be held in prime ministerial level. Greece, with a note dated 10 February 1975, agreed that following preparations accordingly, talks should be held so as to draft the special agreement to refer the dispute to the ICJ.

Consequently, the Ministers of Foreign Affairs of Greece and Turkey met on 17-19 May 1975 in Rome, where the Greek side submitted a draft text of a "special agreement" for consideration and negotiation. The Turkish government reasserted that meaningful negotiations on the matter should take place firstly, and argued that other possible means of peaceful settlement could be considered when all primary means of substantial negotiations were exhausted[73].

In this context, Turkey put forward the consideration of a "joint exploitation" scheme. In addition, the Turkish side proposed to initially work out a geomorphological map of the Aegean seabed in order to lay down basic criteria that would apply to the delimitation of the continental shelf between Greece and Turkey. In the end of the meeting, the joint communiqué issued stated that "the issues related to the Aegean continental shelf were discussed and initial study of the text of special agreement to submit the case to the International Court of Justice was undertaken"[74].

[73] Deniz Bölükbaşı. (2004), p. 243.
[74] Joint Communiqué, Rome. 19 May 1975.

Right after this meeting, the Greek Prime Minister Kostas Karamanlis and Turkish Prime Minister Süleyman Demirel met in 31 May 1975 in Brussels. Following this meeting the joint declaration stated once again that it was decided that "the problems dividing the two countries should be resolved peacefully through the negotiations and the issue of the Aegean continental shelf through International Court of the Hague"[75]. In this respect, they also decided to speed up the meeting of experts on the continental shelf and airspace issues in the Aegean.

Nevertheless, in relation to the convening of the meeting of experts decided by the Prime Ministers, several problems arose as to the discussions that would be held at the expert level. Greece insisted that the meeting to be held on 25-27 September 1975 would exclusively be limited to the drafting of a special agreement whereas this stand was in total contradiction with the political agreements that were made. This situation in turn, prevented the realization of the experts meeting. As a response to the matter, the Turkish government, with another Note on 30 September 1975, argued that it was decided at the Prime Ministerial level that the two parties would initiate bilateral negotiations concerning all their problems. Moreover, it reminded that those issues related to the Aegean continental shelf areas that could not be solved by negotiations would be jointly submitted to the Court. The Turkish Government once again underlined that the best way of overcoming these problems and solving the differences was through bilateral negotiations and a just and fair agreement should be based on equitable principles[76].

[75] Joint Communiqué, Brussels, 31 May 1975. See Appendix L for the text of the Brussels Communiqué.
[76] Turkish Note Verbale, 30 September 1975.

In the consequent Notes that were exchanged between Greece and Turkey, Greece asserted that it had previously been agreed that the Anatolian coats and therefore Turkey's continental shelf do not possess continuity and called upon the early drafting of the special agreement in order to be submitted to the ICJ[77]. Turkey, on the other hand, opposed to the Greek interpretation and invited Greece to conduct meaningful negotiations[78].

4.2.2 Bern Expert Meetings

Under these circumstances, the first meeting of experts between Greece and Turkey took place in Bern on 31 January-2 February 1976. Although the meeting provided both sides with the opportunity of clarifying and declaring their respective positions, no progress was achieved in the meeting.

The Turkish side mainly argued in the meeting that firstly parties should make an agreement of principle not to extend their territorial sea beyond the limits of the prevailing time as a condition "*sine qua non*"[79]. In addition it asserted that the balance that was established by the Lausanne Treaty should be maintained in the Aegean. It further argued that for the purpose of accurate delimitation a definition of the Aegean Sea had to be defined in line with geophysical and geological notions. Moreover, Turkey

[77] Greek Note Verbale, 2 October 1975.
[78] Turkish Note Verbal, 18 November 1975.
[79] Latin phrase for "Condition without which not".

put forward that it had not been a party to the 1958 Geneva Convention on the Continental Shelf and therefore it was not opposable against Turkey by Greece who was a party to it[80].

The Greek side, on the other hand, argued that it had the right to extend its territorial sea to 12 nautical miles and would not abandon this right as the Law of the Sea Conference had unanimously decided accordingly. Furthermore, Greece emphasized the territorial and political unity of its state and that every island had its own continental shelf. In this respect, Greece proposed that the dividing line of continental shelf in the Aegean should be a median line between the Greek Islands and the Turkish mainland[81].

In response, the Turkish delegation argued for the geological continuation of the mainland of Turkey in the Aegean, putting forward that a very deep basin extending in the north-west south-east direction in fact separated the geological reflections of the Greek and Turkish mainlands. Therefore, the diagonal zone divided the Aegean into two parts that would be appropriate to take as a reference in continental shelf delimitation. The Greek side rejected the geological dissertations arguing that the dispute was one of a legal character. As for the joint exploitation offer on the part of Turkey, Greece set delimitation as a precondition to considered possibilities of such an exploitation and

[80] U. Leanza and L. Sico "Mediterranean Continental Shelf; Delimitation and Regimes", *International and Legal Sources,* Vol. 2, Book IV, (New York: Oceana Publications Inc., 1988) pp-1556-1557 cited in Deniz Bölükbaşı. (2004), p. 247.
[81] Deniz Bölükbaşı. (2004), pp. 246-255.

repeated its stand that the issue should be referred to international adjudication. Under these conditions, the Bern Meeting ended with no results[82].

The second meeting of experts between Greece and Turkey took place once again in Bern in 19-10 June 1976. The Greek position in the second meeting was that, considering the first meeting, there existed a deadlock and the matter had to be referred to the ICJ. Greece also suggested that, a common definition of the dispute and location of the concerning continental shelf area should be indicated. According to the Greek delegation, the dispute did not involve the whole Aegean and they refused to accept Turkey's suggestion of a common definition of the Aegean Sea.

The Turkish delegation on its part made a presentation on the joint exploration scheme under an autonomous international regional authority, which was refused by the Greek who insisted that the issue could not be taken into account unless the continental shelf was delimited. In addition, Turkey claimed that there was a need to take all elements together in determining the delimitation of the continental shelf such as geological and geomorphological elements concerning the coasts of the two states and the depths of the Aegean Sea. Greece refused the suggestion as well as defining the Aegean Sea for the purpose of delimitation of the continental shelf areas. The Second Bern Meeting, like the first one, ended without any achievements.

Following unsuccessful meetings without positive outcomes, on 13 July 1976, the Turkish National Security Council recommended the government that research activities

[82] Deniz Bölükbaşı. (2004), pp. 246-255.

would be carried out by seismic research vessel MTA Sismik-I in the Turkish territorial sea and the high seas in the Aegean[83]. In the following month, the seismic research vessel MTA Sismik-I engaged in seismic exploration in the Aegean high seas. This was responded by the Greek government on 7 August 1976 with a Note protesting "the violation of its rights" and requesting Turkey to take all necessary measures to ensure this violation would not occur once again in the future.

The next day the Turkish government rejected the protest which it considered as having no bases and totally unacceptable. It also asserted that the research activities would continue as it was planned and consequently the Turkish research vessel escorted by a Turkish minesweeper and an aircraft, carried on its exploration activities. As opposed to the scientific research activities undertaken by Turkey, Greece turned to the United Nations Security Council and the ICJ.

4.3 Dispute in the International Scene

On 10 August 1976, Greece simultaneously appealed to the United Nations and also instituted proceedings in the ICJ. These applications constitute the only occasion where the Aegean dispute was referred to the United Nations for debate and appropriate action.

[83] Article 118 of the Turkish Constitution gives the National Security Council an advisory role with regards to the execution. It follows: "The National Security Council shall submit to the Council of the Ministers its views on the advisory decisions that are taken and ensuring the necessary condition with regard to the formulation, establishment, and implementation of the national security policy of the state. The Council of Ministers shall evaluate decisions of the National Security Council concerning the measures that it deems necessary for the preservation of the existence and independence of the state, the integrity and indivisibility of the country and the peace and security of society."

4.3.1 Greek Appeal to the United Nations Security Council

The Greek application to the UN Security Council was based on the claim of a dangerous situation that was generated by the Turkish explorations on the Aegean continental shelf that Greece considers its own and that this situation was a threat to international peace and security[84]. In its appeal, Greece put forward Article 35 of the UN Charter, asking for the Council to reassure the peace that had been threatened by Turkey because of its exploration activities in the Aegean[85]. Greece founded the endangered situation of maintaining peace, by the maneuvers of Turkish air and naval forces and their accompanying the research vessel Sismik-I and the responsive military measures taken by the Greek government[86].

Turkey, in reply, once again stated its position that the Greek claims on the continental shelf were ill founded where the Continental Shelf was yet to be delimited. Turkey also recalled that its own vessel was harassed by the vessels and aircraft that belonged to Greece. Moreover, Turkey complained that Greece had militarized the Eastern Aegean Islands in violation of the Lausanne Treaty of 1923[87]. Consequently, Turkey appealed

[84] United Nations Document S/12167, August 10, 1976.
[85] Article 35(1) of the UN Charter states: "Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly".
[86] United Nations Document S/12174, August 12, 1976, p.5.
[87] United Nations Document S/12172, August 11, 1976; United Nations Document S/12175, August 13, 1976; United Nations Document S/12176, August 13, 1976.

the Council to invite Greece into meaningful negotiations and demanded Greece to demilitarize the concerned islands in the path to put an end to the threat to peace and security in the region.

On 25 August 1976, the UN Security Council adopted Resolution 395 (1976) that urged both parties "to do everything in their power to reduce the present tensions in the area so that the negotiating process may be facilitated"[88]. The Resolution also called for the continuation of direct negotiations and invited both parties "to continue to take into account the contribution that appropriate judicial means, in particular the ICJ, are qualified to make to the settlement of any remaining legal differences which may identify in connection with their present dispute[89].

In this context, the Council emphasized the importance of meaningful negotiations between Greece and Turkey as a primary means of settlement and indicated the availability of the ICJ along with the course of these negotiations. It is also worth mentioning that the Council did not attempt to deal with the substance of the matter, but it only suggested a framework for the dispute to be resolved.

4.3.2 Greek Request of Indication of Interim Measures

[88] UN Resolution 396 (1976), Para. 2. See Appendix M for the text.
[89] UN Resolution 396 (1976), Para.s 3 and 4.

At the same time, Greece had filed a request to the Court, for interim measures of protection, requesting the Court to direct that the governments of Greece and Turkey shall, until a final judgment on the case has been reached, "refrain from all exploration activity or any scientific research" and "from taking further military measures or actions which may endanger their peaceful relations"[90].

The Greek request was founded on Article 33 of the General Act of 1928 for the Pacific Settlement of Disputes, the Article 41 of the Statute of the ICJ, and Article 66 of the Court's Rules of Procedure. As for justifying its request, Greece put forward that the Turkish vessel Sismik-I was operating illegally upon Greek continental shelf; this exploration on the part of Turkey was causing "irreparable damage" and if continued it would intensify the dispute and disrupt the friendly relations between the two states, leading to military measures or actions with a threat to international peace and security[91]. Greece also stated the "extreme urgency" of the request by mentioning the sizeable arm forces of both countries facing each other throughout this process[92].

In its decision of 11 September 1976, the Court denied Greece's request for interim measures on the grounds that there were no sufficient risk of irreparable prejudice to Greece's rights to require exercise of its power to grant interim measures of protection[93]. The Court found that there were no threat of such an injury and thus no need or justification on interim measures of protection. More importantly, the Court stated that

[90] ICJ Pleadings, Aegean Sea Continental Shelf Case (Greece v. Turkey), p. 66.
[91] ICJ Pleadings, Aegean Sea Continental Shelf Case (Greece v. Turkey), pp. 63-64.
[92] ICJ Pleadings, Aegean Sea Continental Shelf Case (Greece v. Turkey), pp. 65-66.
[93] Aegean Sea Continental Shelf, Interim Protection. Order of 11 September 1976, ICJ Rep. 3.

the areas of the continental shelf in the Aegean are "areas in dispute", therefore the Turkish activities could not be considered as an infringement upon the rights of Greece; where it was unclear whether these activates had taken place in areas that appertain to Greece.

4.3.3 Greek Application to the International Court of Justice

By unilateral application, Greece had also instituted proceedings in the ICJ against Turkey, relating to a dispute concerning the delimitation of the continental shelf appertaining to Greece and Turkey in the Aegean Sea, and concerning the respective legal rights of those states to explore and exploit the Aegean continental shelf. The Greek application had a restrictive attitude in that it limited the dispute to the continental shelf adjacent to the Greek islands and not concerning any other part of the Aegean or seabed thereof.[94]. In this context, Greece claimed that the explorations carried out by the Turkish government had intruded the continental shelf of the Greek islands of Samothrace, Lemnos, Agios Efstratios, Lesvos, Chios, Psara and Andipsara. In its application Greece also argued that the dispute could not have been resolved through negotiations between Greece and Turkey.

Greece put forward two alternative bases on which the jurisdiction of the Court could be founded. The first was Article 17 of the 1928 General Act for the Pacific Settlement of Disputes, which provided for the submission of disputes to Permanent Court of

[94] ICJ Pleadings, Aegean Sea Continental Shelf Case (Greece v. Turkey) p. 10.

International Justice (PCIJ). This was to be accompanied by Article 37 of the Statute of the ICJ, which effectively substituted the International Court of Justice for the Permanent Court. Greece had acceded to the General Act in 1931 and Turkey in 1934, both with reservations, and neither state had denounced it, resulting in Greek claim that it was still in force for both of them.

The second basis of jurisdiction relied upon by Greece was the Brussels Joint Communiqué of 31 May 1975. Including the statement that the two Prime Ministers "decided that those problems should be resolved peacefully by means of negotiations and as regards the continental shelf of the Aegean Sea by the International Court at The Hague", Greece claimed that both had accepted the jurisdiction of the Court.

In accordance with these two bases, Greece requested the Court to adjudge and declare that Greece was entitled to the continental shelf mentioned above, what the course of boundary between the portions of the continental shelf appertaining to Greece and Turkey would be, that Greece had right to exercise its sovereign rights over these areas and Turkey did not, that Turkish activities here constituted infringements over the sovereign and exclusive rights of Greece and that Turkey shall not continue any further activities within the areas of continental shelf which the Court would adjudge appertain to Greece[95].

As for the Turkish observations concerning the Greek claims, Turkey stated that it had been willing and anxious to engage in meaningful negotiations with Greece, however it

[95] ICJ Pleadings, Aegean Sea Continental Shelf Case (Greece v. Turkey), p.11.

was Greece who had persistently failed and refused to do so. In addition, Greece had refused to consider the Turkish proposal for joint exploration as well[96]. Turkey also stated that Greece had been carrying out research activities in the area since 1963 whereas Turkey engaged in similar activities only since 1974, underlining that the Greek research ship Nautilus was doing research in the Eastern Aegean outside Greek territorial waters at the time of the pleadings. Moreover, Turkey put forward that Greece had not been even willing to agree on a definition of the Aegean Sea for the purpose of meaningful negotiations, with an intention of isolating the continental shelf areas relating other than the islands in the Aegean.

The Turkish government argued that the Court lacked *prima facia* jurisdiction for two reasons. Firstly, Greece was not entitled to rely upon any valid agreement between the two states. The General Act of 1928 was no longer in force and in no time during the governmental talks had there been any mention of the General Act[97]. As for the Joint Communiqué, it stated "these should be settled pacifically by negotiations and concerning the continental shelf of the Aegean Sea by the ICJ". This could not be interpreted as amounting to one state unilaterally applying to the Court. Moreover, the subject matter appears to be the whole of the Aegean, contrary to the Greek application that was limited to the said islands[98].

Secondly, Turkey argued that, even in the event of the General Act being in force applicable, it would be subject to a reservation that would exclude the Court's

[96] ICJ Pleadings, Aegean Sea Continental Shelf Case (Greece v. Turkey), pp. 69-76.
[97] Aegean Sea Continental Shelf Case, ICJ Reports 1978, para. 36.
[98] ICJ Reports 1978, para. 99.

jurisdiction. The reservation made by Greece excluded the disputes relating to the territorial status of Greece from the procedures described in the General Act. In conformity with Article 39/3 of the General Act, which stated: "If one of the parties to a dispute has made a reservation, the other parties may enforce the same reservation in regard to the party", Turkey opposed this reservation to the Greek application[99].

On 19 December 1978, the court delivered its judgment; by 12 votes to 2, it had found that it did not possess the jurisdiction to entertain the Application filed by the Government of Greece[100].

The Court decided that there existed a legal dispute between Greece and Turkey in respect of the continental shelf in the Aegean Sea[101]. In respect of the first basis of jurisdiction relied upon, Article 17 of the General Act of 1928, the court considered that if the applicability of the reservation was justified then the question whether the General Act was in force and applicable would cease to be essential for the decision regarding the court's jurisdiction[102]. The Court viewed that, Turkey's invocation of the reservation in a formal statement made in response to a communication from the Court must be considered as constituting an enforcement of the reservation within the meaning of Article 39/3 of the Act. The Court therefore took into account the reservation that had been properly brought to its notice in the proceedings[103]. In this respect, the Court decided that the dispute related to the territorial status of Greece within the meaning of

[99] ICJ Reports 1978, para.39.
[100] ICJ Reports 1978, p. 78.
[101] ICJ Reports, 1978, para. 31.
[102] ICJ Reports, 1978, para. 40.
[103] ICJ Reports, 1978, para.s 41-47.

the reservation and it was effective in excluding the matter from the scope of the General Act. Consequently, the General Act could not be used as a valid basis for the jurisdiction of the Court.

The second basis of jurisdiction relied upon by Greece was the Brussels Joint Communiqué of 31 May 1975. Contrary to the Turkish contention, the Court did found that the communiqué amounted to an international agreement. However, examining the course of negotiations of which the Brussels meeting and the subsequent text, the Court gave the opinion that Turkey had always intended that the two states should negotiate a special agreement or *compromis* defining their dispute, on the basis of which they could make a joint submission to the Court. It found that that the parties did not undertake any unconditional commitment to refer the continental shelf dispute to the Court[104]. As a result, the Court decided that the Brussels Joint Communiqué did not constitute an immediate and unqualified commitment on the part of Greece and Turkey to accept the submission of the dispute to the Court unilaterally by application and therefore there were no valid basis for establishing the Court's jurisdiction[105].

4.4 From Agreement to Crisis (1976-1987)

Soon after the UN Security Council Resolution was declared and the Greek request for interim measures was declined, the Ministers of Foreign Affairs of the two Aegean

[104] ICJ Reports, 1978, Para.s 100-106
[105] ICJ Reports, 1978, Para.s 107-108

states once again met in New York on 1 October 1976. The Joint Communiqué issued at the end of the meeting envisaged that talks on the Aegean disputes of continental shelf and air space would be resumed in order to reach a mutually acceptable settlement. In this respect, the representatives of both states met in Bern on 2-11 November 1976[106].

The Bern Agreement was signed at the last day of the meeting, setting out the fundamental grounds for the Aegean continental shelf delimitation. Within this context, the two parties agreed that "the negotiation shall be frank, thoroughgoing and pursued in good faith, with a view to reaching an agreement based on their mutual consent with regard to the delimitation of the continental shelf as between themselves"[107]. Moreover, the agreement urged Greece and Turkey in Article 6 "to refrain from initiative or act concerning the Aegean Continental Shelf that might trouble the negotiations". It was also agreed for the establishment of a mixed commission to be set up, composed of national representatives in order to study the practices and the international rules on the subject so as to make use of these principles in the delimitation of the continental shelf between Greece and Turkey[108].

Following the Bern Agreement, Greece and Turkey engaged in a process of negotiations, both at a technical and political level. Until October 1981, five expert meetings were held on the matter, as well as eleven meetings at the level of the Secretary Generals of the Ministers of Foreign Affairs. Nevertheless, with the newly formed

[106] Deniz Bölükbaşı. (2004), p. 285.
[107] Article 1 of Bern Agreement 1976. The full text of the Bern Agreement can be found in Hulusi Kılıç. (2000), p. 277. See Appendix N for the text of Bern Agreement.
[108] Bern Agreement, 1976, Articles 8-9.

socialist government in Greece, the process was interrupted leading to the end of dialogue between Greece and Turkey on the issue of continental shelf[109].

Under the leadership of Andreas Papandreou, the new Greek government of PASOK was formed in October 1981. Right after coming to power, the government granted a petroleum exploration license to North Aegean Petroleum Company (NAPC). The license covered the offshore oil field near the Northern Aegean Greek island of Thassos[110].

The Turkish government immediately responded, reminding the Greek government its obligations under the Bern Agreement not to conduct such exploration activities. The Greek government assured that it would abide by the agreement and appealed to the *force majeur* provision of the concession agreement so as to put an end to the exploration activities. Turkey correspondingly made similar protests addressed to the Greek Government's concessions to Greek Public Petroleum Company in 1984, which covered the areas beyond the Greek territorial sea in Strimonicos and Thermaicos bays. The Greek government assuring Turkey to comply with the terms of the Bern Agreement, pointed out that the mentioned localities could sometimes stretch beyond the territorial sea because of technicalities[111].

[109] Haritina Dipla. *The Greek-Turkish Dispute over the Aegean Sea Continental Shelf: Attempts of Resolution* in Theodore C. Kariotis (Ed.) *Greece and the Law of the Sea*, (The Hague: Kluwer Law International, 1997), pp. 163-164.
[110] Deniz Bölükbaşı. (2004), p. 287.
[111] Deniz Bölükbaşı. (2004), pp.288-289.

The issue, which had so far been handled peacefully between Greece and Turkey, nevertheless became troublesome in October 1985. On 3 October, the Greek government all of a sudden lifted the *force majeur* provision it had invoked in 1982 and declared that the Greek Public Petroleum Company would associate in petroleum activities in the areas east of Thassos. This decision was accompanied by the Greek Prime Minister Andreas Papandreou's denunciation of the 1976 Bern Agreement, which meant that it no longer recognized the agreement and consequently would not consider itself bound by its terms[112].

These sudden developments directly led to frustration and tension between the two states. Turkey made it clear that it would not recognize the unilateral denouncement of Greece from its obligations under the agreement. The matter was further tightened when on 24 February 1987 the NAPC announced that it would drill for oil, 10 nautical miles east of Thassos the following month. Regardless of the Turkish objections and protests, the Greek government confirmed the planned drilling activity[113].

As a counter-action, Turkey initiated procedures to grant petroleum licenses to TPAO in the Aegean and the Turkish vessel "Piri Reis" started to conduct scientific research in the high seas areas of the Aegean in March 1987. The Greek response came quick; the Turkish vessel was harassed by Greek military aircraft over the Aegean. Following the

[112] Deniz Bölükbaşı. (2004), pp.288-289.
[113] Theodore C. Kariotis. (1997), p.163.

publication of the new licenses in the Turkish Official Gazette, MTA Sismik-I sailed towards the Aegean for seismic research as well[114].

Meanwhile, Turkey brought the matter to the attention of the United Nations Secretary General, pointing out to the grave situation created by the Greek actions, with a letter from the Turkish Ambassador to the United Nations on 23 March 1987[115]. The letter emphasized that the ongoing negotiation process since 1976 was disrupted by the Greek government and acted contrary to the terms of both the Bern Agreement and the UN Security Council Resolution 395 of 1976. Moreover, Turkey noted that the Greek government had considered the Bern Agreement to be inoperative because of the lack of negotiations; whereas it was Greece who had terminated the negotiations and acted totally different than the terms of the agreement, not refraining from engaging into exploration activities and deliberately causing to an aggravation of tension between their bilateral relations. The Turkish government also asserted that it does not intend to acquiescence to any unilateral Greek action with regard to the Aegean continental shelf. In view of the prevailing situation, Turkey argued that Greece should refrain from all activities beyond its territorial waters on the Aegean continental shelf and should agree to resume negotiations in the context of the Bern Agreement.

As it became apparent that Greece was determined to go on with this attitude; Turkey announced that it would proceed with conducting seismic research activities in the high sea of the Aegean, unless Greece refrained to do so. However, in addition to this, the

[114] Theodore C. Kariotis. (1997), p.164.
[115] Letter dated 23 March 1987 from the Permanent Representative of Turkey to the UN Secretary General (S/18759) cited in Bölükbaşı p.289.

Turkish Prime Minister Turgut Özal stated on 27 March 1987 that in the course of this seismic activity, Turkey would not go beyond its territorial waters, if Greece similarly would refrain from drilling beyond its own territorial waters[116].

The crisis was only defused as a result of this firm and conciliatory stand accompanied by the involvement of the Secretary General of NATO and the USA, Greece eventually withdraw from its planned drilling activities. In the aftermath of the crisis, a process of dialogue was established: the Davos Process[117]. However, the Aegean continental shelf issue could not be dealt with properly in the process, because Greece insisted on referring the case to the ICJ as the only way to settle the dispute. Since then the issue remains unsolved. The two Aegean states comply with the terms of the Bern Agreement at the moment, not engaging into any actions beyond their respective territorial seas; but on the other hand, no efforts are made to go one step further on the matter.

[116] Theodore C. Kariotis. (1997), pp. 164-165.
[117] Theodore C. Kariotis. (1997), pp. 164-165.

CHAPTER FIVE

LEGAL CLAIMS OF GREECE AND TURKEY

With respect to the delimitation of the continental shelf, the Greek and the Turkish authorities diverge in several matters, leading the matter into a deadlock. For about 18 years no progress is made on the dispute, since neither of them is even willing to compromise on the nature of the dispute. They disagree on the area of waters to be claimed as continental shelf; on the legal rules to be applied and on the approach for a legal settlement. The two states put forward conflicting arguments although both suggest the application of international law at the same time. The security considerations are also a predominant element in their approaches to the problem.

5.1 The Greek Point of View

The Greek government is, first of all, critical of the Turkish attitude in solving the delimitation problem, as it tends to politicize the issue instead of a solution acclaimed by

international law. Greece on the other hand, is determined to solve the matter in compliance with international law, since the issue itself possesses a legal character. In line with this position, Greece's legal claims are categorized under three major headings: the right of islands to their own continental shelf; to preserve the integrity of its territories to encompass the islands and the principle of the median line[118].

First and foremost, Greece seems uncomfortable about the Turkish approach to the problem. Turkey argues that the delimitation of the continental shelf areas between Greece and Turkey concerns the partition of the entire Aegean and insists that it should acquire those areas that fall west of the Greek islands up to the middle of the Aegean Sea. This understanding of delimitation falls far from having a legal character, making the issue one of a political. Greece maintains that, without any reference to international law and practice, Turkey tries to realize its aspirations in the Aegean Sea with ill-grounded propositions.

Greece on the other hand, stresses that the matter to be settled concerns the areas that fall east of the Eastern Greek Islands; from the Thracian border to the islands of the Northern and Eastern Aegean and the Dodecanese. Turkey, by invoking the "equity"[119] principle to the contrary, has no sufficient grounds to include the whole of the Aegean to the concerned matter. Turkey does not interpret this principle in accordance with international law, but gives an arbitrary interpretation to the notion. It chooses this

[118] Hüseyin Pazarci, *Ege'deki Deniz Sorunlarında Türk ve Yunan Görüşleri: Hukuki Açıdan* in *Ege'de Deniz Sorunları Semineri,* (Ankara, 1986), pp. 80-88.
[119] See Chapter VI for the definition and application of "equity".

criterion with a deliberate political outlook in order to further expansionist moves towards the Aegean, without any reference to international law[120].

With a pure legal stance, firstly, Greece states that all Greek islands, including the Eastern Aegean islands belonging to it, have a right to claim continental shelf. There is no reason for these territories should be denied the legal right just as mainland Greece has. This is in total conformity with international treaty and customary law, mentioned openly in the 1958 Geneva Convention on the Continental Shelf Article 1(b). "Greece notes that, it is necessary to respect rights acquired under the existing international Conventions, especially those adopted under the auspices of the UN"[121].

Nevertheless, Turkey does not recognize that islands are entitled to continental shelf; instead, it intends to carve a line right in the middle of the Aegean, partitioning the whole sea as if there were no islands. Under international law, Greece has full rights of continental shelf for its islands in the Aegean, backed up by two major international conventions on the law of the sea and the 1969 decision of the ICJ regarding the delimitation of the continental shelf in the North Sea, where islands are entitled to their own continental shelf[122]. Greece also argues that this rule is not only a conventional, but also a customary rule of international law; it should accordingly bind Turkey although it was not a party to the Convention[123].

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[120] Hakkı Akalın. (1999), pp. 134-135.
[121] UNCLOS Official Records, Vol,1, p.128.
[122] Chritos L. Rozakis *The Greek Continental Shelf* in Theodore C. Kariotis. (1997), p. 100.
[123] The Statement of the Greek Delegation at the Meeting of Experts of the Governments of Greece and Turkey in Bern on 19 and 20 June 1976, cited in Yüksel İnan and Yücel Acer. *The Aegean Disputes*, (Ankara: Foreign Policy Institute, 2003), p.36.

Turkey's claim that the Aegean islands demonstrate a special case and therefore should enjoy fewer rights is thus ill-founded in international law. It makes no sense for the Greek islands to be deprived of their continental shelf right whereas other islands possess this specific legal right. "As geographical diversity is inevitable and the primary aim of every system of law is to have a general and uniform application, these islands should have the right as others"[124]. The Turkish irrationality is more obviously seen when the number of Greek islands about 3000 and the continuous chain it forms starting from mainland Greece is taken into consideration. It is impossible to ignore the existence of these islands as well as their continental shelf areas[125].

Secondly, Greece is very much concerned over its security and political position in the Aegean. It is important to bear in mind that Greece and Turkey has come to the brink of war several times during the century, Turkey being considerably hostile in several disagreements or misunderstandings in the Aegean. From the Greek perspective, Turkey initiated its aggressive attitude by questioning the control and command arrangements of NATO concerning the Aegean; unilaterally declared half of the Aegean continental shelf under its jurisdiction, invaded Cyprus in 1974 and threatened Greece of war in the summer 1996 by questioning Greek territorial sovereignty over a number of islets[126]. All serve as examples of the danger and the volatile relations between the two neighboring states.

[124] UNCLOS, Vol.1, p.128.
[125] Hakkı Akalın. (1999), pp. 133-135
[126] Bryon Theodoropoulos. *What are the Stakes? What is the Cost?* in Theodore C. Kariotis. (1997), p.328

As for maritime delimitation, when looked from the Greek perspective, Turkey endangers Greece's political and territorial integrity by its continental shelf policy, by intending to divide Greek sovereign territories. It is important to note that Greece is a country composed of several islands as well as a mainland. In this respect, Greece believes that a foreign sea should not divide the state's political and territorial integrity. This statement is also backed by customary law as well as the UN Charter[127]. As Turkey claims part of the Aegean Sea to be its own continental shelf, this situation will in turn divide Greek territory and political integrity.

Not only Turkey would divide Greek territory in the Aegean with its ill-founded policy towards Greece, it will directly threaten the security of the Greek Aegean islands by enclaving them with Turkish continental shelf area. The Turkish policy in the Aegean is more than mere maritime delimitation; it aims to entrap these islands by surrounding them with Turkish maintenance in the Eastern Aegean. This poses a significant security problem with regard to these islands whose connection with mainland Greece would be deliberately interrupted by the Turkish government[128].

With respect to these important perspectives of the Greek government, there appears only one solution in delimiting the continental shelf areas in the Aegean Sea. The best solution for delimitation is the median line of equidistance[129]. The concerned maritime area should be divided in accordance with the median line principle, where the

[127] UN Charter Article 2(4) says "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."
[95] H. Pazarcı *Uluslararası Hukuk Dersleri,* (Ankara: Turhan, 2003), pp. 376-379.
[129] UNCLOS, Vol.1, p.128.

separating line would pass between the Greek Islands, which are found at the outmost East, and mainland Turkey. Greece justifies this solution with the 1958 Geneva Convention on the Continental Shelf Article 6(1), where a median line is provided in the absence of an agreement between opposite states that delimits the continental shelf area. As there is no agreement with Turkey regarding the continental shelf areas, the median line itself is set out as the last resort to the delimitation problem that exists between the two Aegean states[130].

It is also important here to note that, in the UN Conference on the Law of the Sea, Greece constantly argued that there should be one solid rule to be applied in this case. "The less room it left for bilateral agreement, the better it would protect the international legal order"[131]. Greece maintained that unambiguous rules of law are the best means for the protection of the rights, as equitable principles are vague and dangerous as it will open the door to conflicting interpretations[132].

More importantly, the median line solution complies with international law; it recognizes the right of islands to continental shelf and implements the principle of median line provided in international treaty law. In addition, it serves in favor of Greek security interests in the region, preserving its political and territorial integrity with regard to any possible harassment from the Turkish side.

[130] UNCLOS Vol.2, p.152.
[131] UNCLOS Vol.1, p.128.
[132] UNCLOS Vol.2, p.158.

Greece claims that, because of years of disagreement and Turkish tendency to drag the issue out of norms of international law together with politicizing the issue, it finds the only solution as referring the case to the ICJ. Greece also mentioned during the Conference that compulsory jurisdiction for the peaceful settlement of disputes is necessary and that "unilateral recourse to a Court is the only way out"[133]. Nevertheless, Turkey refuses to stand in Court and the dispute is therefore stuck in a deadlock.

5.2 Turkish Point of View

Turkey is persistent on arguing for a delimitation in the Aegean that concerns the whole of the semi-enclosed sea. Contrary to Greek propositions, Turkey in its part has legal justifications of its own, again arguing for a settlement in accordance with international law. It is important here to note that, Turkey is not a party to the 1958 Geneva Convention as well as to the 1982 Convention, although Greece is a party to both. As a result the dispute needs to be dealt within the context of customary international law.

Together with rules of international customary law, the Turkish position is also inspired by the jurisprudence of the ICJ, particularly the 1969 judgment of the North Sea Continental Shelf Case[134]. In this context, Turkey puts forward four important justifications for its policy in the Aegean Sea: (1) the need for an agreement for

[133] UNCLOS Vol.5, p.51.
[134] Aslan Gündüz. "Discord between Greece and Turkey over the Extent of their Continental Shelves in the Aegean", *Hellenic Studies,* Vol.4 No.2, (1996), p.97. See Chapter IV for further information on the North Sea Continental Shelf Cases.

delimitation; (2) the significance of natural prolongation; (3) the principle of equity and (4) the legal and political balance to be preserved in the Aegean[135].

Firstly, Turkey argues for an agreement to be reached between the two Aegean states with regard to the delimitation of the continental shelf. Also being mentioned in the two major conventions on the law of the sea, the first attribution for a settlement is affected by an agreement. The history of relations between states showed that the most common means of settling international disputes was negotiations, particularly meaningful negotiations, and that it had been recognized by the ICJ in the judgment concerning the North Sea Continental Shelf Case[136].

Regardless of customary law, Article 6 of the Geneva Convention on the Law of the Sea and Articles 74-83 of the 1982 Convention attach considerable emphasis on the agreement of parties in formulating rules on delimitation of the seabed or maritime areas[137]. As also stated in the Jan Mayen Case of 1993, the delimitation of the continental shelf between states with opposite or adjacent coasts, is to be affected "by agreement on the basis of international law, as referred to in Article 38 of the Statute of the ICJ, in order to achieve an equitable solution.[138]" This perspective is in line with Turkish policy in the Aegean, where Turkish policy makers always sought to achieve an agreement with its Greek counterparts on several meetings, including ministerial level ones.

[135]Hüseyin Pazarcı. (2003) p.378.
[136] UNCLOS Vol.5, p.31.
[137] Aslan Gündüz, (1996), p. 101.
[138] Jan Mayen Case, ICJ Reports, 1993, para 48.

Despite the fact that Turkey is in favor of an agreement, it does not totally reject the possibility of submission of the dispute to the ICJ[139]. Nevertheless, Greek rejection of an agreement, even a prior "special agreement" to set out the fundamental concerns of the dispute and its persistence of referring the issue directly to the Court, prevents any improvement on the matter. Although the problem can be dealt bilaterally between Greece and Turkey, the fact that Greece insists on internationalizing the issue is totally unconstructive towards solving the discord.

Secondly, Turkey asserts that the continental shelf areas are defined primarily by the natural prolongation of the land territory into and under the sea. Consequently, each country should be entitled to a continental shelf based on the prolonged land territory towards the sea. Since the notion of the continental shelf was essentially a geomorphological one, the criterion should be natural prolongation[140].

The seabed of the Aegean is interrupted by a major depression running down the middle of the Aegean and this feature constitutes a natural boundary between the natural prolongations of mainlands Greece and Turkey. Therefore the Greek islands that face the Turkish coast geologically reside in the natural prolongation of the Anatolian land mass and for this reason they do not possess a continental shelf of their own[141]. This position

[139] The reason Turkey does not favor referring the issue to the ICJ is that, Greece tends to demonstrate the continental shelf issue as the sole point of dispute in the Aegean; whereas Turkey argues for several other matters in the Aegean and therefore wants all of them to be settled accordingly and simultaneously when applied to the Court.
[140] UNCLOS Vol.1, p.169.
[141] Cengiz Karaköse. *Ege'de Deniz Sorunlarında Türk ve Yunan GörüşleriJeolojik Açıdan* in *Ege'de Deniz Sorunları Semineri,*(Ankara: 1988), pp.52-79.

is also justified by the ICJ's judgment on of the North Sea Continental Shelf Case in 1969[142]. As a result, the Greek claim that every island possesses its own continental shelf does not fit within the broader legal definition of the continental shelf, because of the Turkish natural prolongation that forms the Greek islands.

Thirdly, and most importantly, the Aegean case deserves special emphasis to the principle of equity. Turkey has always defended that equitable principles are "the hallmark of the entire method of delimitation[143]. The delimitation of the continental shelf areas are affected by those principles and rules applicable which are appropriate to bring about an equitable result, as stated in the Tunisia/Libya case of 1982[144].

There are two significant justifications that Turkey resorts to in this respect. Further to the legal fact that the existence of islands creates a special circumstance to be taken into account in maritime delimitation, the configuration of the Aegean Sea creates an additional unique character regarding the Greek islands with their location, number, size and population. In the course of negotiations, special circumstances such as the general configuration of the respective coasts, the existence of islands, islets and rocks of one state on the continental shelf of the other needs to be considered[145]. Although small in number of Greek islands of various sizes lie in close proximity to the coast of Turkey, covering nearly %85 of the long Turkish coastline. Turkey's almost all coasts to the

[142] UNCLOS Vol.2, p.158. The judgment of the North Sea Continental Shelf Case was concluded with respect to the natural prolongations of the parties. It also disregarded the equidistance principle, because the natural prolongation of the continental shelf of Germany extended beyond the equidistant line between Germany and Denmark.
[143] UNCLOS Vol.2, p.158.
[144] The Tunisia /Libya Case, ICJ Reports, 1982, Para. 50.
[145] UNCLOS Vol.3, p.201.

Aegean Sea is already encircled by the Greek islands and their adjacent territorial seas. In addition, the Aegean Sea is a semi-enclosed sea, which makes the maritime delimitation to be determined jointly by the coastal states[146]. States bordering enclosed and semi-enclosed seas may hold consultations among themselves with a view to determining the manners and method of application, appropriate for their rights[147]. In light of these characteristics, delimitation between Greece and Turkey has to be done in line with equitable principles.

In this respect, to begin with, Greece needs to acknowledge that the existence of islands and the semi-enclosed structure of the Aegean Sea create a special circumstance, and then agree to delimit the continental shelf with reference to equitable principles that is fair to both sides. Actually, all these Turkish propositions are not new; they are drawn from rules and general principles of international law which are confirmed by case law[148].

Lastly, Turkey argues that a delimitation of continental shelf in the Aegean needs to take into account a special consideration, which is partially legal and partially political. The political and legal balance established by the Lausanne Treaty ought to be preserved. Turkey stresses that the Lausanne Treaty has established a balance between Greece and Turkey in the Aegean Sea and both states should benefit from the Aegean in equal terms[149].

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[146] Sevin Toluner. *Milletler Arası Hukuk Dersleri,* (Istanbul: Beta,1989), pp.247-265.
[147] UNCLOS Vol.3, p.230.
[148] UNCLOS Vol.2, p.158.
[149] Hüseyin Pazarcı. (2003), p. 378.

CHAPTER SIX

LAW OF THE SEA IN RESPECT OF THE AEGEAN CASE

The Aegean Sea continental shelf case is a unique one among similar maritime delimitation cases; as far as the individual claims point out, both states want a solution that would be in accordance with international law. So does their justifications for the delimitation. One argues for a delimitation that relates the whole Aegean whereas the other draws the line in the East; however both justify their claims legally. This situation stems from the selection of sources of international law, interpretation of the law and involving politics in the issue.

In order to have a comprehensive look to the dispute of continental shelf between Greece and Turkey, firstly the concerned geography needs to be defined and then the applicable law should be decided on. As Turkey is not a party to the 1958 and 1982 Conventions, the matter has to be solved in the light of customary international law. Of course the willingness to solve the matter is another must to have a compromise. The

issue needs to be dealt in legal terms; the role of politics in the Aegean should be minimized so as to reach a fair solution that would be in the interest of both states[150].

6.1 Geographical Dictation

By definition, the geographical area that the continental shelf is aimed to be delimited concerns the seabed areas of the Aegean Sea which are beyond the 6 nautical miles territorial sea limits of Greece and Turkey. However, this precision is insufficient for the matter to be confined into. Greek perception of the area of the dispute is limited to the continental shelf areas that fall east of the Eastern Aegean Islands next to the Turkish coast, as it presented the issue to the ICJ in 1976. Turkey on the other hand, argues for a settlement that would draw up a boundary for continental shelf areas that would pass right at the middle of the Aegean Sea.

[150] Years of ongoing conflicts between Greece and Turkey such as the Cyprus question, the status of islands, the airspace, the grey areas and maritime delimitation issues have made both parties politically sensitive to each other. On the other hand, in domestic politics, both governments claimed to be right towards their nationals. Domestic politics prevailed over the international one; however in 1997 Greece preferred to review its policy. It involved the bilateral disputes of Greece and Turkey into European Union's agenda, making the Aegean Continental Shelf dispute an international problem. Furthermore, Turkey's reapplication in the second half of 1997 implicitly seems to support the Greek stance since EU requires all disputes between the members and candidates to be resolved peacefully. The decision of the Luxembourg Summit of December 1997 made reference to settlement of the Greek –Turkish disputes. "A European Strategy for Turkey" in the Presidency Conclusions included: "The European Council recalls that strengthening Turkey's links with the European Union also depends on that country's pursuit of the political and economic reforms on which it has embarked, including the alignment of human rights standards and practices on those in force in the European Union; respect for and protection of minorities; the establishment of satisfactory and stable relations between Greece and Turkey; the settlement of disputes, in particular by legal process, including the ICJ; and support for negotiations under the aegis of the UN on a political settlement in Cyprus on the basis of the relevant UN Security Council Resolutions." This decision of the European Council officially supported the Greek arguments, not as a support but reflecting the politics of EU in terms of disputes.

6.1.1 North-South Depression

For the area of delimitation to be identified, geographical and geological characteristics of the Aegean Sea gain considerable importance. While Greece argues that all islands including the Eastern Aegean islands have their continental shelf of their own, Turkey insists that these islands fall in the natural prolongation of Turkish mainland. In this respect, the situation of the islands gains outmost importance.

Turkish argument is based on pure geological statements; that the seabed of the Aegean Sea is interrupted by a major depression running down the middle of the Aegean in a general North-South direction[151]. This is derived from the research made on the ocean crust; the bottom of the depression displaying different characteristics at different places. This geomorphologic reality brings us to an important fact that the whole of the Aegean can not be regarded as the natural prolongation of any state, but actually there is a maritime boundary line between the natural prolongations of the Greek mainland and the Turkish mainland. Consequently, the Eastern Aegean islands are situated at the eastern side of this natural frontier and sit on the seabed that is the natural prolongation of the Turkish land mass extending into and under the sea. It would not be wrong to say that the maritime space between these Greek islands in the Eastern Aegean and the Turkish mainland is like a flooded part of the Turkish land. Geologically too, a clear similarity is observed between the seabed east of the major depression and the Turkish land territory[152].

[151] Cengiz Karakose. (1988), pp. 59-72.
[152] Aslan Gündüz. (1996), p. 103

In this connection, Turkey argues that the delimitation of the continental shelf areas in the Aegean ought to reflect this geological fact. So long as the natural prolongation of the Turkish mainland extend up to the middle of the Aegean and by definition continental shelf are those areas that are composed of the natural prolongation of the coast, there is no point in limiting the issue to the narrow belt between the Greek islands in the eastern Aegean and the Turkish coast[153].

The Turkish view is also supported by some of the ICJ judgments. When the dispute arose in the Aegean between Greece and Turkey, the Court had accepted the view that geophysical feature would serve as a legal delimitation line in cases where there are no other natural features to divide the distinct shelves. In other words, when the delimitation area between two coastal states is divided by a natural feature, then it will be considered as the formal line that would divide the natural prolongations of the two different states. This was the case in several judgments of the ICJ such as the North Sea Continental Shelf Cases of 1969 [154] In addition; two other disputes were settled with this approach, between Australia and Indonesia, and between Japan and Korea[155].

[153] The delimitation between Federal Republic of Germany and Denmark at the North Sea Continental Shelf Cases in 1969, was set according to the natural prolongations of the two states.
[154] Cases where the ICJ decided on a maritime delimitation according to the geophysical feature are; the North Sea Continental Shelf Cases 1969, para. 45; The Tunisia/Libya Case 1982, para. 66; Anglo-French Arbitration 1977, para. 106; The Gulf of Maine Case 1984, p.275.
[155] Trenches in the Anafura Sea and Timor Sea was regarded accordingly in the maritime delimitation between Australia and Indonesia in 1972. For details see the Australia–Indonesia Maritime Delimitation Treaty, 1972 at www.aph.gov.au. In 1974, the Okinawa Trough was given effect in delimitation between Japan and Korea. For details see the Agreement Concerning the Establishment of Boundary in the Northern Part of the Continental Shelf Adjacent to the Two Countries, 1974 at www.momaf.go.tr.

For this reason, the major depression right in the middle of the Aegean Sea that stretch in a general North-South direction is of outmost importance in determining the boundary between the natural prolongations of Greece and Turkey.

From a different perspective, it can be argued that the Court seemed to change its view after the Libya/Malta Case in 1985 where it concluded on a change of this thinking, that a state may claim up to a 200 mile limit whatever the geological characteristics may say about the corresponding seabed and subsoil[156]. However, it is important to note that the Court in this specific case has decided concerning the exclusive economic zone, whereas the regimes of continental shelf and exclusive economic zones are somewhat different[157]. Moreover, the new rule will not deprive a state of its rights under the previous law, without its consent. It will not be opposable to states that have been persistently objecting such an application, bearing in mind the "persistent objector" principle of international law[158]. In this case, Turkey is known to be the objector, with strong persistence on the application of the principle of natural prolongation. It is also crucial here to point that this new application of 200 mile limit without taking into account the natural prolongation is not pursued by the following cases[159].

[156] ICJ Reports,1985, para. 39

[157] The exclusive economic zone is an area beyond and adjacent to the territorial sea, with an extension of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, where the coastal state exercises its sovereign rights to explore and exploit the zone and conduct economic activities in this respect. For the legal definition and further information see Articles 55-75 of the 1982 Convention on the Law of the Sea.

[158] An exception to a legal rule is when a state consistently opposes the rule without interruption. The opposing state can escape the otherwise binding nature of an international legal custom by invoking the persistent objector rule. See Malcolm N. Shaw. *International Law,* (Cambridge: Cambridge University Press, 1991), pp. 76-78.

[159] Guinea-Guinea Bissau Case, ICJ Reports, 1985, para.116

Thus, the depression that naturally divides the Aegean into two is considered as a legal delimitation line between the continental shelf areas of Greece and Turkey. Regarding this fact alone, the Greek argument of the delimitation area to be refined to the eastern side of the Eastern Aegean Islands is easily refutable, since Turkish mainland's prolongation naturally reaches to the middle of the Aegean anyway. More strikingly, the question of whether these islands have a continental shelf of their own inherently weakens the Greek views, as they reside on the Turkish natural prolongation at the first place.

6.1.2 Right of Islands to Their Own Continental Shelf

The heart of the delimitation issue in fact lies at the different views over the continental shelf rights of the Eastern Aegean Islands. It is crucial to initially identify whether these Greek islands have the capacity to generate continental shelf areas of their own, over the seabed of the Turkish natural prolongation.

It is important to note that islands, especially those close to another state are considered as special circumstances. Firstly, an island as small as 1 km^2 could rule over an area of 190 times bigger than it is, if it is allowed to have a contiguous zone of 24 nautical miles[160]. In such a case we can not speak of a fair distribution of maritime areas, if this

[160] Article 33/2 of the UNCLOS provides "The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured."

island is depriving another state from rights over this area[161]. The direct application of international law thus does not necessarily mean an equitable solution.

Moreover, when an island is situated very close to the coasts of another state, it would deprive the latter altogether from its rights on the seabed. In this case, it can be argued that the island would have more right for continental shelf than the mainland of the coastal state. Even if an island is not situated that close to another state, but stands right in between two opposite states, the equidistant method would give the three-fourths of the maritime areas to the state that the island belongs to. A significant point is that, islands can not prevail over the considerations that are related to the mainlands[162]. These circumstances are clear examples of what makes such islands a special case and explains why the Eastern Aegean islands should be regarded in this context[163]. It should be kept in mind that "…special circumstances are those circumstances which might modify the result produced by an unqualified application of the equidistance principle."[164]

In light of these, both Greek and Turkish arguments should be analyzed. Greece asserts that the Eastern Aegean islands are entitled to continental shelf just as any other island would have, pointing to the 1958 Geneva Convention Article 1(b) and 1982 Convention Articles 76 and 121 in defense. In legal terms, these two articles can not be imposed on Turkey, as it could be done to another state, because it is not a party to both of these

[161] N. Ely "Seabed Boundaries between Coastal States: the Effect to be Given to Islands as Special Circumstances", *International Resource Lawyer,* Vol.6, (1972) pp. 218, 234.
[162] Yücel Acer.(2003), p. 227.
[163] See N. Ely and R.F. Pictrowski "Boundaries of Seabed Jurisdiction off the Pacific Coast of Asia", Natural Resource Lawyer, Vol. 7, 1975, pp.611-619.
[164] Greenland-Jan Mayen Case , ICJ Reports, 1993, para.55

conventions and there they have no binding character upon Turkey. In this respect, we need to ask the question whether these two articles have become part of customary law.

At the Geneva Conference of 1958, the rule did not gain wide support; 35 states remained non-committed whereas only 31 states voted for its inclusion. Therefore, it was inherently hard to expect this article to develop as customary law[165]. It was referred by the ICJ, for the first three articles of the Geneva Convention as customary law in the North Sea Continental Shelf Cases; nevertheless this revealed the acceptance of the continental shelf as a general concept, not including the whole of the article[166]. In other words, not every provision of the Convention was accepted as customary law; the fundamental example would be the reference to technology, which no one has ever referred to as having the character of customary international law[167]. In the Seabed Committee, established right after the Geneva Convention had come into force, several states challenged the capacity of all islands to generate submarine areas as well as contesting the definition of continental shelf itself[168].

In the third United Nations Conference on the Law of the Sea, which gave way to the 1982 Convention on the Law of the Sea, a significant number of states including Turkey opposed to the concept of all islands having a submarine area, stating that all islands can

[165] Aslan Gündüz. (1996), pp. 106-107.
[166] The first three articles of the Geneva Convention refer to legal definition of the concept and the rights of the coastal State over the continental shelf.
[167] Aslan Gündüz. *The Concept of Continental Shelf in its Historical Evolution*, (Istanbul: 1990), pp.120-129.
[168] *The United Nations Convention on the Law of the Sea, (A Historical Perspective)* at www.un.org.

not be treated the same way.[169]. Even after the definition of continental shelf in the Geneva Convention was changed and Articles 76 and 121 were adopted in 1982, this opposition went on. Article 121 was in fact adopted in a very unusual manner; it was accepted without detailed treatment because of lack of time. Thus, the Article does not have a character reflecting the general view of states over the rights of islands to continental shelf. Not only this was the case during the Conference, there is no hint that it is accepted even after the Conference[170].

As a result, these articles and thus the statement that all islands are entitled to submarine areas are not opposable against a state, namely Turkey, which is not party to these Conventions and opposed to the drafting of and the principles within the provision. Therefore the Greek argument that the Eastern Aegean Islands have a continental shelf of their own, will not find support in legal terms, as the rule is not a part of customary international law.

Regardless of their non-existent customary law character, the articles of the 1958 Convention actually give no indication of an amount of continental shelf area in a delimitation setting. Even if the general principles of the continental shelf had passed into customary international law, the rule on entitlement should not be confused with the rule on delimitation. Lacking any help when delimitation is the issue, Article 1 only mentions the islands' right to continental shelf. It is article 6 of the 1958 Convention that

[169] UNCLOS Vol.1, p.169; UNCLOS Vol.3, p. 213. For draft articles by Turkey in UNCLOS, see Yüksel İnan. Devletler Hukuku Bakımından Kıyı Suları Balıkçılığı ve Sorunları, (Ankara: Ankara Iktisadi ve Ticari Ilimler Akademsisi Yayınları, 1976), pp. 201-205.
[170] Aslan Gündüz. (1996), p.107

defines the procedures to be followed in the delimitation of the continental shelf. Article 6 states that where special circumstances exist, the equidistant line is not acceptable. As islands in a delimitation area constitute a special circumstance, the right of an island to have an area of continental shelf of its own depends on the islands' size, locality, population and political status[171]. One good example is found in the Channel Islands Case, where the Arbitral Court decided in the enclavement of the islands that belonged the U.K., because they were situated much closer to the French coast. Similarly, in the Tunisia/Libya Case, the Court gave only partial effect to those islands that were proximate to another state's coast on the grounds that "there were other considerations which prevail over the effect of its presence. In the Gulf of Maine Case, the Court gave actually no effect to the concerned island in delimitation[172].

As a result, capacity and effect should be distinguished; Article 121 concerns the abstract generative capacity of islands, not the concrete effect that the islands would be given in delimitation. This delimitation would be determined on the basis of the general rules of equitable principles and an equitable result[173].

In sum, islands can not be considered as sufficient unites for the purpose of delimitation, with regards to contrary claims of mainlands. The rule on the definition and scope of the continental shelf areas should not be confused with that of the delimitation of the area between two states. Not every island is given the same effect when delimitation is the

[171] Aslan Gündüz. (1996), p. 108.
[172] See next section for details on the Channel Islands, Tunisia/Libya and Gulf of Maine Cases and how they relate to the Aegean Continental Shelf dispute.
[173] Deniz Bölükbaşı. (2004), p.482.

case. Not only islands constitute a special circumstance by their own, their close proximity to another state's coast serves as an important ingredient in terms of delimiting continental shelf areas.

6.1.3 Semi-Enclosed Nature of the Aegean Sea

Another significant point to be taken into account in the delimitation of the Aegean Sea continental shelf case concerns the geographical outlook of the Aegean Sea. This fact too affects the settlement in the Aegean, as the coasts of the Greek and Turkish territories face each other, creating another special circumstance. This characteristic deprives the case from being regarded as an ordinary one and the application of the equidistant line.

In the Libya/Malta Case of 1985, although no specific circumstance existed that affected only by their coats being opposite to each other, the Court had concluded that the equidistant line was not applicable, due to the Mediterranean Sea being a semi-enclosed one and the Maltese island constituting a limited coastal area with a small significance within the geographical whole of the Mediterranean Sea. The decision was against the Maltese, giving only one-fourth of the concerned area to her, whereas an equidistant line would give the half to the island. Even the fact that Malta was an independent island state was not influential in the Court's decision. In fact, the Court stated that, had Malta not been an independent state, but an island forming a part of an independent state, the

delimitation of the continental shelf would be different, giving even less submarine areas to the island, with a delimitation line closer to Malta, in order to create equity[174].

When applied to the Aegean context, the Aegean Sea is not only a semi-enclosed sea that necessitates a solution more than an ordinary application of the legal rules, but it is much smaller with regards to the Mediterranean, where states would be more affected directly by the outcome of a maritime delimitation. In this context, it can be concluded that delimitations in a semi-enclosed sea involve more than the treatment of individual geographical features; the overall geographical context determines the extent of an island's continental shelf[175].

6.2 Principle of Equity and Fairness

The reason for international legal rules to be applied differently in different cases stems from the fact that every case has a unique character that dictates particular solutions, when relevant inputs are taken into consideration. In practical terms, what matters in the continental shelf delimitation is that whether the result of delimitation in the context of the Aegean Sea would be equitable, if Greek islands were to be given the same weight as much as the mainland coast of Turkey. Thus, the crux of the matter relies on the

[174] Libya/Malta Case, ICJ Reports, 1985, para. 53. The Court maintained in its judgment that "Malta being independent, the relationship of its coats with the coasts of its neighbors is different from what it would be if it were a part of the territory of one of them. In other words, it might well be that the sea boundaries in this region would be different if the islands of Malta did not constitute an independent state, but formed a part of the territory of one of the surrounding countries."

[175] Donald C. Karl. *The Delimitation of the Aegean Continental Shelf; Equitable principles and the Problem of Islands* in t*he Aegean Issues, Problems and Prospects*, (Foreign Policy Institute: 1989), pp. 155,158.

equitable solution between states, not on the pure application of what international treaty law dictates.

The principle of equity and fairness has long been considered as a source of international law, as a part of the general principles of law. Often been applied by international tribunals, the principle appears to be within the ambit of Article 38/1(c) of the Statute of the ICJ. The most prominent use of equity has been in the law of the sea, in the context of the delimitation of maritime zones between opposite and adjacent states[176]. The essential point is that the principle of equity is a source of international law in the sense that it may influence the manner in which more substantive rules are applied. It is a "form of equity which constitutes a method of interpretation of the law in force, and is one of its attributes."[177] The ICJ has emphasized that equity is not an abstract concept, but the application of rules of international law with due regard to fairness and reasonableness.

In this regard, the settlement between Greece and Turkey needs to be handled from the perspective of equitable principles, considering the special characteristics of the Aegean Sea. The location, number and size of the islands, the coastal relationship of Greece and Turkey within them; the geological characteristics and length of the seabed underneath, and a reasonable degree of proportionality need to be taken into account in delimitation. This unique character of the Aegean indicates the uncontestable application of equitable

[176] Martin Dixon. *Text Book on International Law,* (London: Blackstone Press, 1993), p. 38.
[177] ICJ Reports, Frontier Dispute Case, 1986, p. 58.

principles for the fair and equitable delimitation of continental shelf, in favor of both states.

6.2.1 Non-Encroachment

First of all, the non-encroachment principle must be applied in the delimitation of continental shelf. It is actually a root concept in the jurisprudence as a fundamental principle governing delimitation. This principle was developed by the ICJ in its North Sea Continental Shelf Cases judgment in 1969, with a view to demonstrate that the equidistance method is not inherent in the regime of the continental shelf. The Court ruled as follows:

> "…the use of equidistance method would frequently cause areas which are the natural prolongation or extension of the territory of one State to be attributed to another, where the configuration of the latter's coast makes the equidistance line swing out laterally across the former's coastal front, cutting if off from areas situated directly before that front."[178]

In short, this statement refers to the fact that the delimitation must respect the areas that represent the natural or most natural prolongation of the territory of each state[179]. The importance of the configuration of coast is also underlined by the Court, emphasizing the particular geographical situation being an equitable solution by stating that "a State's continental shelf, being the natural prolongation of its territory, must in large measure

[178] ICJ Reports, 1969, p. 44.
[179] ICJ Reports, 1985, para.s 45-45.

reflect the configuration of its coasts."[180] Therefore, the coastal projection into the sea lies at the heart of the concept of the delimitation process.

The reason for the natural prolongation to be given a considerable weight is to avoid the dangers of cut-off effects. The Court establishes that each state should receive those areas of the seabed where its interests protected under the continental shelf regime are strongest in comparison[181]. In other words, the security interests of a coastal state off its coasts are also taken into consideration by the system established by the continental shelf regime. By ensuring that the shelf of one state would not cut-off the other from areas directly before or in front of its coastline, the requirement of the non-encroachment principle is satisfied. The logic of the principle can be thought as each state receiving those areas where its security interests are the stronger.

The non-encroachment principle is also underlined in the Guinea-Guinea Bissau Case, where the Arbitral Tribunal noted that "In order for any delimitation to be to be made on an equitable and objective basis, it is necessary to ensure that as far as possible, each state controls the maritime territories opposite its coasts and their vicinity.[182]" The Tribunal pointed out that the application of this principle would satisfy the concerns for security[183].

[180] ICJ Reports, 1985, para.s 100, 246.
[181] ICJ Reports 1969, para. 43.
[182] ICJ Reports, Maritime Delimitation between Guinea-Guinea Bissau, 1985, para. 92.
[183] ICJ Reports. 1985, para. 124.

In order to satisfy this principle, the ICJ proposes the median line principle in delimitation issues where the prolongations of opposite states meet and overlap. It states that the delimitation could only be done by "…ignoring the presence of islets, rocks and minor coastal projections the disproportionality distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved."[184] In line with this view, in its decision in 1977, the Arbitral Court found that the delimitation based on a median line between the mainland coasts of France and United Kingdom, ignoring the existence of the Channel Islands under the sovereignty of Britain, would be an equitable solution leaving broadly equal areas to each state. The Court added that, had the islands were added into calculation and treated in the same way as mainland England, this approach would completely undermine an equitable solution[185]. Under customary law, the method used for delimitation must ensure equity.

When applied to the to the Aegean Sea Continental Shelf Case, the non-encroachment principle thus leads us to the solution that the delimitation of continental shelf in the Aegean Sea would consist of a median line between the natural prolongations of Greek and Turkish mainlands. Consequently, the median line would pass right in the middle of the Aegean Sea, without reference to the islands. In any account, the existence of the Turkish continental shelf in the Aegean would not cut the maritime connection of the Greek islands to the Greek mainland. It is not justified to argue that an equidistant delimitation line between the mainlands would threaten the security of the Greek

[184] ICJ Reports, 1969. p. 57.
[185] ICJ Reports, 1977, pp. 191-195.

islands[186]. Consequently, an ultimate equitable solution would be reached, which would at the same time avoid cut-off effects, as well as applying the very nature of the continental shelf regime, by prioritizing the natural prolongation rule. This equitable solution would be in the interest of both states.

6.2.2 Enclave

Another deduction from the same rule directs us to enclavement. As long as islands are ignored in the delimitation of continental shelf in line with the non-encroachment principle, the islands are subject to enclavement. The Channel Islands were provided with an enclave solution, where the Court of Arbitration made it clear that a small island in front of a long mainland coast does not block the seaward extension of the mainland coast[187]. The greater security interest of the mainland was acknowledged compared to the lesser important nature of the dependent island. The logic is that an island can not block the natural prolongation of the mainland coast behind it. The seaward extension thus reaches around the islands and enclaves them.

This judgment provided the conceptual basis for an equitable delimitation in the form of an enclave. The enclavement is the only available solution in situations involving islands in close contiguity to a foreign coast. The case in the Aegean is a similar one, the islands being one of close contiguity. In this particular case, the enclave method is the most

[186] Yücel Acer. (2003), pp. 235-236.
[187] ICJ Reports, 1977, pp. 191-192.

appropriate method to reach an equitable result. It fully satisfies the basic criteria governing the choice of method which are essential in evaluating, and responding to the circumstances of the unique case of the Aegean Sea[188].

By this way, the close proximity of the Greek islands to the Turkish coast and the fact that these islands lie on the "wrong side" of the median line is taken into consideration. It should be kept in mind that, these islands are not procedures of the continental shelf on which they sit. Rather, they are the products of that shelf that constitutes natural extension of the Turkish mainland coastline. Without question, the maritime areas west, north and south of these islands are not natural prolongations of their short coasts, but in fact they are properly and legally the natural prolongations of the mainland coast of Turkey.

6.2.3 Equality of Title

The "equality of title" does not necessarily mean equality of reach; it not legally supported that the dependent Greek islands would have an equal reach or prolongation with that of the primary coast of the Turkish mainland in the Aegean. The status of these islands off the Turkish coast should be given proper consideration. It is a fact that Greece is not an archipelagic state formed exclusively by islands, with no continental landmass. Rather, it is a continental mainland state, where the islands are anomalous dependent islands of a larger mainland state. Just as it was concluded in the 1985

[188] Deniz Bölükbaşı. (2004), p. 498.

judgment of the ICJ in Libya/Malta Case, islands dependent are not equal with mainlands in their capacity to generate rights over maritime area; rather they are "anomalous dependent islands of a large mainland state[189]. The judicial decisions and practice of States disclose that it is generally accepted that an island state must necessarily be accorded more weight than such distant fragments of mainland states; and that independent States should be favored over dependent territories. [190]

When the Greek argument is considered, equity falls into question. If the natural prolongations are not prioritized, the non-encroachment is disregarded, an enclave solution is not welcomed and the Greek islands were given full effect on the boundary, then this would have several inequitable outcomes ranging from political to geographical and legal.

Firstly, this would grant a privileged position to the dependent islands of a continental state in relation to their continental neighbor with a long coastline next to the area of delimitation. It will fall contrary to the principle that independent states should be favored over dependent territories. Secondly, it would disregard the geographical factors in the Eastern Aegean and ignore how the coasts project into the sea, where the seaward extension of the Turkish coast is the dominant factor. The natural prolongation of the Turkish landmass would thus be overlooked. Thirdly, it would assume that the continental landmass of the Turkish mainland is a projection of the submerged landmass of the Greek islands. To put it differently, the Turkish mainland would be considered as

[189] ICJ Reports, 1985, Dissenting Opinion of Judge Schwebel, p.182.
[190] Deniz Bölükbaşı. (2004), p. 500.

sitting on the continental shelf of the Greek islands and that it is the product, rather than the producer of the continental shelf on which it lies. Fourthly, the Greek mainland would be non-existent and consequently the area of entitlement would depend solely on the detached Eastern Aegean islands. This would make no sense as continental part of Greece is the main land territory whereas the islands are dependents. Fifthly, it would assume that Greece is an independent insular state formed by islands without continental landmass and that it is entitled to archipelagic status under Article 46 of the 1982 UN Convention on the Law of the Sea. This would completely deny the actual geographical and political status of Greece. Sixthly, it would mean that no high seas exist on the west of the Eastern Aegean islands, between them and the Greek mainland and between the islands themselves. It would regard the Aegean Sea no different than a Greek Lake.[191].

6.2.4 Proportionality of Coastal Lengths

Another equitable principle to be applied in the Aegean Sea Continental Shelf Case is the element of proportionality. The concept of proportionality is a purely geographical one based on the lengths of the coasts of the parties. It compares the ratios of the maritime areas allocated to the parties to the dispute. It proceeds from the general concept of equity which requires either equal or proportional treatment[192]. This principle is recognized by the jurisprudence of international tribunals as well as seen in state practice. In the 1982 Tunisia/Libya Continental Shelf Case, the ICJ declared that

[191] Deniz Bölükbaşı. (2004), pp. 512-513.
[192]Deniz Bölükbaşı. (2004), p. 352.

proportionality "is indeed required by the fundamental principle of ensuring an equitable delimitation."[193]

When applied to the Aegean context, proportionality between the relevant coastal lengths of the coasts of Greece and Turkey in the Aegean and the maritime areas resulting from a delimitation to be affected is essential. Although proportionality is not a legal rule or a method of delimitation, it serves as an important measure of equitableness of the resulting continental shelf boundaries in the Aegean Sea. Even in the case of the coastal lengths of mainlands of Greece and Turkey are considered, and the islands' coastal fronts are not ignored, there will be disproportion in the areas appertaining to Greece and Turkey, in favor of the former, with a ratio of 4.56 to 1[194]. Therefore, even the non-encroachment principle and the enclave method are applied; it will result in significant disproportionate areas of continental shelf.

In this regard, Deniz Bölükbaşı proposes three possible methods to be considered in order to compensate the disproportionality. He suggests schemes of joint exploration and exploitation; an areal compensation in favor of Turkey in the Aegean and compensation in the Mediterranean[195]. However, the compensation issue is neither a widely accepted phenomenon in international law nor an example of state practice in the issue of maritime delimitation. Consequently, despite the fact that proportionality is accepted as

[193] ICJ Reports, 1982, para. 103 The measurement of the respective coasts for the purpose of proportionality is measured according to their general direction. While leaving the appropriate technical method to the parties, the ICJ in the North Sea Continental Shelf Cases proposed the "principle of coastal front" for measuring the general direction of the coastline, which consists of drawing a straight baseline between the extreme points at either end of the coasts concerned or in some cases, a series of such lines. See, ICJ Reports, 1969, para. 98.
[194] Deniz Bölükbaşı. (2004), pp. 517-524.
[195] Deniz Bölükbaşı. (2004), pp. 529-530.

an equitable solution, it is questionable to support any compensation to Turkey due to the delimitation of continental shelf areas in the Aegean Sea.

In sum, it is possible to say that the extraordinary features of the Aegean Sea necessitate the consideration of the special circumstances and the application of equitable principles, just as it is mentioned in international law. Otherwise, when taken as an ordinary case, the characteristics of the sea leads the way to an unequal solution where the articles of conventions and definitions will by themselves result in the abuse of the rights. It is important here to note that, the UN Convention of the Law of the Sea says:

> "States Parties shall fulfill in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right."[196]

6.3 Obligation to Negotiate

In the light of the previous chapters, it is seen that Greece and Turkey could not come to an agreement on delimiting the submarine areas in the Aegean. Although the two Aegean states acknowledge one another's right to continental shelf, the contradiction is about where to draw the boundary line in the Aegean Sea. As seen in the historical display of relevant events stated in Chapter Four, Greece and Turkey not only could not agree on a boundary line, but they also were incompetent of agreeing on minimal terms that would help them bring the issue to an international arbitration. In the negotiations

[196] UNCLOS, 1982, Article 300.

that took place between the two, Turkey gives priority to negotiations whereas Greece speaks of a judicial settlement.

The fact that Turkey does not favor an ICJ settlement has nothing to do with the presumption that Turkey would not benefit from it. The fact is that, contrary to the Greek claims, Turkey argues that there are actually many disputes that should be settled along with the continental shelf issue[197]. On the other hand, Greece believes that direct negotiations as Turkey puts forward would put Greece in a situation to accept the existence of other relevant disputes such as the delimitation of the territorial sea and the airspace. This will force Greece to make compromises on these issues; therefore it is unacceptable since Turkey might succeed in gaining more Greek rights in the Aegean Sea[198].

Firstly, continental shelf is an area that falls outside the territorial sea as defined above. Therefore, the length of the territorial sea directly affects the areas that would be left to be called as continental shelf. For this reason, any change in the breadth of the territorial sea on the Greek side, which Greece argues that is has the right to enlarge up to 12 miles, would considerably decrease the areas left to be claimed as continental shelf. The Turkish argument thus makes sense because it wants the territorial sea issue to have a precision in the first place, in order not to affect the continental shelf issue afterwards. In addition, any delimitation on the part of the continental shelf will have an effect on the

[197] Interview with Ministry of Foreign Affairs, Director of Maritime Affairs Section Çağatay Erciyes, (Ministry of Foreign Affairs, Ankara, 30 December 2003).
[198] The Greek Foreign Ministry spokesman C. Bikas said "Greece cannot accept talks on all issues because this would imply the recognition of the Turkish demands in the Aegean" BBC SWB, EE/2465 B/3, 20 November 1995 cited in Yucel Acer. (2003), p. 51.

delimitation of the fishery zones or in its contemporary terms the exclusive economic zones in the Aegean. As these have not reached to a precision as well, the sole settlement of the continental shelf dispute would not put an end to the disputes of the two coastal states.

In this context, the Greek stubbornness on ignoring relevant issues of maritime delimitation in the Aegean Sea puts the matter into difficulties. Not only the delimitation of the continental shelf areas in the Aegean is a complex issue because of the unique characteristics of the semi-enclosed sea, but the possibly of a change in the extent of territorial sea or other relevant factors that would also bring the continental shelf issue back to where it started, if the issue is to be resolved independent of other maritime issues between Greece and Turkey in the Aegean Sea.

As for Turkey's persistence on negotiations before taking the matter to a judicial settlement, it is seen that in international law resorting to an international court is not compulsory, whereas it is an obligation for a state to negotiate its differences or disputes with other states[199]. Not only customary law encourages states to settle their disputes between the parties, but also Article 33 of the UN Charter, Article 6 of the Geneva Convention on Law of the Sea and Articles 74 and 83 of the 1982 Convention attach considerable significance to the agreement of the parties when the case is delimiting maritime areas[200].

[199] Aslan Gündüz (1996), pp. 100-101.
[200] Aslan Gündüz (1996), pp. 100-101.

Another thing to bear in mind is that, in this dispute, the parties agree on almost nothing which makes things even more complicated; because the parties need to fully negotiate their differences before going to the Court so as to identify their points on which they agree or disagree[201]. Even if they do not agree on the areas of delimitation; on the sources of law to be applied to the dispute; on the means of interpretation of a definite legal norm; if they do apply to the Court under these circumstances what would be the attitude of the Court in resolving the dispute? Without a clear agreement, will the Court unilaterally draw a boundary line in the Aegean or will it simply indicate the principles that will be applicable for the delimitation of the continental shelf? These issues remain to be vague, but can only be clarified during the proceedings of counter memorial, reply and rejoinder in accordance with the statue of the Court to be pursued during the proceedings[202].

6.4 Case Law Regarding Delimitation of the Continental Shelf

As Turkey is not bounded by the 1958 and 1982 Conventions, the solution to the dispute between Greece and Turkey is tried to be dealt in accordance with customary law. When looked from a broader perspective, it is seen that the customary law has also been built upon compliance with the terms of the international conventions and also by judicial decisions and state practices that gained support in the international scene.

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[201] Suat Bilge. *The Situation in the Aegean*, in *The Aegean Issues: Problems and Prospects,* Foreign Policy Institute, (Ankara, 1989), p.12.

[202] The second paragraph of Article 43 of the Statute of the ICJ provides that "The written proceedings shall consist of the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, replies; also all papers and documents in support."

In the context of the Aegean Sea Continental Shelf Case, several distinct international adjudication cases, such as arbitral court decisions and the decisions of the ICJ, on continental shelf and maritime delimitation, gives direction to an equitable and fair settlement in the Aegean: The North Sea Continental Shelf Cases of 1969; the Channel Islands Arbitral Award of 1977; the Tunisia/Libya Case of 1982; the Gulf of Maine Case of 1984; the Libya/Malta Case of 1985; the Case of St.Pierre and Miquelon of 1992; Jan Mayen Case of 1993; Eritrea-Yemen Arbitral Award of 1999, the Qatar-Bahrain Case of 2001 and the Cameroon-Nigeria Case of 2002. Each of them serves as a guide for rules to be employed in cases of delimitation of the continental shelf. For the purposes of this thesis, only relevant parts will be analyzed in these cases.

The North Sea Continental Shelf Cases of 1969, which was referred to the ICJ, comprises the initial case that the Court gave its opinion in the status of the articles in question and laid down the general principles regarding the legal basis of the continental shelf. The case concerned the delimitation of continental shelf between Denmark, the Netherlands and the Federal Republic of Germany. The coastal states were in comparable positions so far as the length of their coastlines were concerned. In referring the case to the Court, Denmark and the Netherlands upheld the equidistance line, whereas Germany stood up for a solution based on equity.

The Court made the observation that “more important is the fact that the doctrine of just and equitable share appears to be wholly at variance with what the Court entertains no doubt is the most fundamental of all the rules of law relating to the continental

shelf…"[203] In relation to this observation, it indisputably decided that the most fundamental of all the rules of law relating to the continental shelf was the principle of natural prolongation. It stated that the application of the equidistance method would cause parts of the natural prolongation of one state to be allocated to another due to the configuration of the coasts of the states concerned. This was the basic logic behind the Court resorting to equitable principles. It stated that the continental shelf of a state must be the natural prolongation of its land territory and must not encroach upon the natural prolongation of another state[204].

Serving as a source of international law, this judgment was highly recognized by the international community. In sense of the importance attributed to the integrity of the natural prolongation it also helps to solve the dispute in the Aegean Sea, as an equitable principle explained above in this Chapter.

The Channel Islands Case of 1977 is of great value as well in delimiting continental shelf areas between states. The Anglo-French Continental Shelf Arbitration resembles to the Aegean Case in that they both display cases where islands of one state lie in close proximity to another state's mainland[205]. The Court was asked to draw a boundary line for the continental shelf areas, where the United Kingdom was supporting the right of

[203] ICJ Reports, 1969, para. 19.
[204] ICJ Reports, 1969, para. 91.
[205] The Channel Islands are an archipelago in the English Channel, composed of Jersey, Guernsey, Alderney, Sark, Herm, Brechou, Jethou and Lihou; of these, the first four are the principal islands, the others being largely uninhabited. They are located approximately 10-20 miles from the French coast and 40-50 from the British.

islands to continental shelf on the French coast and France was defending the non-encroachment of its extension towards the sea[206].

In its judgment, the Court of Arbitration stressed the significance of equity stating, "…failing agreement, the boundary between States abutting on the same continental shelf is to be determined on equitable principles."[207] The Court decided in line with equitable principles, on a median line between the mainlands of France and United Kingdom, ignoring the British Channel Islands very close to the French coast. Consequently, an enclave solution was simultaneously adopted regarding the islands, preventing the island from blocking the seaward extension of mainland France[208].

If applied to the Aegean Case, although there are more islands to be considered in the dispute between Greece and Turkey, the Court's decision can serve as guidance for a similar delimitation. When the seaward extension is the question, the enclave solution seems to be the best way for settlement in order to prevent the islands from blocking the extension, considering the security interests of the mainland state, in this case Turkey. In addition, there exists a natural geographical feature in the Aegean to be taken as a basis in drawing the boundary line.

[206] The Court pointed to a balance between the mainlands and did not allow the islands to disturb the balance. The judgment provided the UK islands with 12 nautical miles territorial sea and no more as for continental shelf areas. See ICJ Reports 1977, para. 196.
[207] ICJ Reports 1977, p. 45.
[208] ICJ Reports 1977, pp.191-192.

Furthermore, the Tribunal clearly observed that the delimitation was not between the UK islands and France, but between the UK and France as a whole[209]. For delimitation, the area relevant is taken as a whole, not the area in dispute. This indicates that, for the delimitation in the Aegean the whole of the Sea is relevant in settling the dispute, contrary to the Greek arguments that the case only involves the area between the Eastern Greek islands and the Turkish mainland.

The third relevant case is the Tunisia/Libya Case of 1982. The two Mediterranean states referred their differences on the delimitation of the continental shelf areas lying off their respective countries and requested the Court to indicate the principles and rules of international law that would be applicable in the concerned case. Both states not being parties to the Geneva Convention, it was agreed that the applicable law would be customary international law. They also agreed that the concept of natural prolongation was to be the commanding principle for delimitation. What the Court would decide was the natural prolongations of the states and the equitable principles to be applied as for the delimitation[210].

Taking into account the developments regarding the evolution of the concept of continental shelf especially after the 1969 North Sea Case, the Court came to the conclusion that "the concept of natural prolongation was and remains to be examined within the context of customary international law."[211] Moreover the Court stated that geomorphological features could be examined in order to determine the division

[209] ICJ Reports 1977, para.s 184-185.
[210] ICJ Reports 1982, para.s 38-41.
[211] ICJ Reports 1982, para. 43

between the natural prolongations of the two states and to identify as relevant circumstances affecting the course of boundary[212]. It also added that these circumstances would be considered to be the elements of an equitable solution[213].

When come to the dispute between Greece and Turkey, the conclusions of the Tunisia/Libya Case offers much on the legal rules to apply. The natural prolongation to be applied at the first place as a dictation of customary law is the ultimate solution to the delimitation problem in the Aegean. Moreover, on the basis of the conclusions of the Court, the North-South Depression in the middle of the Aegean can be accepted as a geomorphological feature that separates the natural prolongations the of mainlands of Greece and Turkey.

The fourth case relevant to the Aegean is the Gulf of Maine Case of 1984. Canada and the United States submitted the case and asked the Chamber of the Court to devise a single maritime boundary that would be observed by both parties for all purposes relating to any claim or exercise of sovereign rights or jurisdiction over the waters or seabed and subsoil by either state against the other[214].

The Chamber established that the delimitation should be affected "in accordance with equitable principles taking into account all of the relevant circumstances of the case in order to produce an equitable result" and added that this would aim "an equal division of

[212] ICJ Reports 1982,para . 67.
[213] ICJ Reports 1982,para. 68.
[214] Mark B. Feldman. *International Maritime Boundary Delimitation: Law and Practice from the Gulf of Maine to the Aegean Sea* in Seyfi Taşhan (ed.) *Aegean Issues: Problems – Legal and Political Matrix Conference Papers,* (Ankara: Foreign Policy Institute, 1995), pp. 8-9.

areas where the maritime projections of the coasts of the states between which delimitation is to be affected converge and overlap."[215] In this respect, the Chamber reduced the substantial disproportion between the lengthy coast of the United States and short coast of Canada. It also did not make use of the equidistance line and gave only partial effect to the island in the area of delimitation[216].

Hence, this decision of the Court in 1984 demonstrates that neither the equidistance line nor the right of an island to continental shelf is decisive, but they are applicable considering the circumstances of each case. In the case of the Aegean, this conclusion works against the Greek claims, where the equidistant line would pass between the Eastern Aegean Islands of Greece and mainland of Turkey, based on the islands' right to continental shelf.

Another case relevant to continental shelf delimitation is the Libya/Malta case of 1985. In this case, the ICJ was asked to decide the principles and rules applicable to the delimitation of the continental shelf between the two countries and to indicate the practical way in which to apply them.

One of the Court's conclusions in its judgment was that dependent islands would be given less weight compared to the independent island states in maritime delimitation[217]. Moreover, it emphasized the semi-enclosed nature of the Mediterranean Sea as constituting a special circumstance, considering the maritime areas to be attributed to

[215] ICJ Reports 1984, para. 195,197.
[216] ICJ Reports 1984, para 197-198.
[217] ICJ Reports 1985, para 53.

individual states in relation with the coastal lengths of mainlands and islands. In this respect, the equidistance line was rejected and a delimitation line was decided on, which would be close to the Maltese coasts, as it had fewer rights compared to Libya, because of its shorter coastline[218].

The Libya/Malta Case dictates that the semi-enclosed nature of a sea must be treated as a special circumstance. When the rights of islands and mainlands are of concern, the coastal length gains real importance. When the Aegean Sea is taken into account, the semi-enclosed character of the sea totally blocks the Turkish channels to high seas if the Eastern Aegean Islands belonging to Greece are given full effect. In this regard, just as it was in the Libya/Malta case, an equidistant line between the Greek islands and mainland Turkey will not be an equitable solution, where the length of the vast Turkish coasts will be disregarded.

In the Case of St.Pierre and Miquelon of 1992, Canada and France had requested from a special Court of Arbitration, the portioning of the maritime area south of these French islands. The Arbitral Tribunal gave the French islands a narrow 200 nautical mile exclusive economic zone corridor across Grand Banks to the high seas[219]. The Court gave the French islands considerably less power to generate zones than the larger Canadian landmasses they are near[220]. The zone given to the French islands provided a corridor to the high seas; however in the final analysis, it fell totally within an area

[218] ICJ Reports 1985, para 67.
[219] Mark Plantegenest et al. *The French Islands of Saint-Pierre et Miquelon: A Case for the Construction of a Discontinuous Juridical Continental Shelf*, at http://st-pierre-et-miquelon.org/english/lecture.php.
[220] Jon M. Van Dyke. (2005), p. 91.

claimed by Canada as exclusive economic zones, in effect creating a French enclave that is surrounded by Canadian waters. Thus, the principle of non-encroachment was underlined once more with this Case.

In the 1993 judgment of the Court on the Jan Mayen Case, Norway and Denmark had resorted to the Court for the delimitation of the continental shelf areas between the island of Jan Mayen, which belonged to Norway, and Greenland, which belonged to Denmark. Norway asked the Court to draw a median line, however this was rejected as the Court stated that the existence of special circumstances would require another boundary line[221].

It was stated by the Court that the median line as a provisional line may be adjusted or shifted in order to achieve an equitable result and more importantly, special circumstances justified a boundary line other than the median line[222]. The Court also underlined that the aim of each and every situation was to reach an equitable result. From this standpoint, the 1958 Convention required the investigation of any special circumstances; on the other hand the customary law based upon equitable principles also required the investigation of the relevant circumstances[223].

Briefly, the judgment of the Jan Mayen Case guides us for an approach for the settlement of the Aegean Case. Considering the extraordinary configuration of the Sea, that serves as special circumstances as outlined above, the Case has to be dealt in

[221] ICJ Reports 1993, para. 49.
[222] ICJ Reports 1993, para.s 50-51.
[223] ICJ Reports 1993, para 54.

accordance with equitable principles. The importance of the proportionality between the lengths of coasts was also mentioned in the Case; where the considerable smaller ratio of the Jan Mayen Island when compared to Greenland was taken into account in shifting the boundary line nearer to the Jan Mayen Island[224]. Considering the coastal length of Turkey in the Aegean, it would not be equitable the draw a boundary line that would leave disproportionate areas of continental shelf.

The case of Eritrea-Yemen and the judgment of the Permanent Court of Arbitration are also instrumental in directing us to an equitable solution in the Aegean. The existence of the islands in between was again proposing a question to be solved. Both Parties claimed a form of median international boundary line, although their respective claimed median lines followed very different courses and did not coincide. The Arbitral Court decided on a median line between the opposite mainland coastlines, also taking into account the element of proportionality[225].

The Eritrea-Yemen Arbitration gave no effect whatsoever to the Yemenese islands of Jabal al-Tayr and al-Zubayr, because "their barren and inhospitable nature and their position well out into the sea" meant that they should not be taken into account in computing the boundary line[226]. Along with the previous cases observed above, it can be concluded that tribunals have not given full power to generate maritime zones if the outcome of such generation would be to limit the zones created by adjacent or opposite

[224] ICJ Reports 1993, para 66.
[225] ICJ Reports 1999, para 165.
[226] ICJ Reports 1999, para.s 147-148.

continental land masses[227]. This should be kept in mind when arguing about the maritime areas that the Greek islands would generate opposite to the Turkish mainland coasts.

Moreover, the concepts of the "special circumstances" or "relevant circumstances" are utilized to include security needs as well as geographical anomalies. The Eritrea-Yemen Arbitration quoted from Judge Manfred Lachs's opinion in the Guinea- Guinea Bissau Arbitration, saying that:

> "…our principle concern has been to avoid, by one means or another, one of the Parties finding itself faced with the exercise of rights, opposite to and in the immediate vicinity of its coasts, which might interfere with its right to development or put its security at risk.[228]"

Therefore, the security considerations of the Turkish coasts needs to be protected as Turkey would face the Greek islands exercising its rights so close to its coasts, in case the islands are given full-effect.

Lastly, in the Bahrain-Qatar Case of 2001, where the Court was asked to draw maritime boundary lines in between, the Court firstly considered whether there had been special circumstances and also stressed the concept of relevant circumstances that may affect the boundary line, in order to achieve an equitable result[229]. References to the importance of equity were made to previous cases[230].

[227] Jon M. Van Dyke. (2005), p.90.
[228] ICJ Reports 1999, p.157.
[229] ICJ Reports 1998, para 229.
[230] ICJ Reports 1998, para,s 227-229, 233-235.

The Court stated that, taking into account a maritime feature located well out to sea would not lead to an equitable solution in delimiting continental shelf areas. In this respect, considerations of equity require that the island of Fasht al Jarim should have no effect in determining the boundary line in order not to distort the boundary on the maritime delimitation[231]. If the island had been given full effect, it would have disproportionate effects[232]. In order to avoid this undesirable result and ensure an equitable settlement, the Court decided to ignore the feature all together. This decision can also be used to argue that the Greek islands in the Eastern Aegean should not be given overwhelming significance in the delimitation of the continental shelf areas since they are not attached to the Greek mainland and actually not a part of the natural prolongation of Greek territory as mentioned above.

Another issue addressed in this case was the question of drawing baselines. Some Greek scholars argue that Greece must be let to draw baselines connecting its islands; similar to archipelagic states[233]. The Court stated in the Qatar-Bahrain Case that it was improper to draw baselines around islands that are part of an overall geographical configuration, unless they were a fringe of islands along a coastline[234]. Thus, any claim of Greece on having archipelagic waters would be ill-founded when the Case of Qatar-Bahrain is taken into consideration.

[231] ICJ Reports 1998, para.s 240-243.
[232] ICJ Reports 1998, para 247.
[233] George P. Politiakis The Aegean Dispute in the 1990s: Naval Aspects of the New Law of the Sea Convention in Theodore C. Kariotis. (1997), p.300.
[234] ICJ Reports 1998, para.s 210-216.

The Cameroon-Nigeria Case of 2002 can be made use of as well; regarding the approach of the Court towards a solution for maritime delimitation. The parties had submitted the case "[i]n order to avoid further incidents between the two countries, ... to determine the course of the maritime boundary between the two States beyond the line fixed in1975"[235]. The Court in its judgment stresses the importance of achieving an equitable result:

> "The Court is bound to stress in this connection that delimiting with a concern to achieving an equitable result, as required by current international law, is not the same as delimiting in equity. The Court's jurisprudence shows that, in disputes relating to maritime delimitation, equity is not a method of delimitation, but solely an aim that should be borne in mind in effecting the delimitation.[236]

Before taking the equidistant line as the ultimate boundary for delimitation between the parties, the Court first looked whether there had been special circumstances that would affect the course of the boundary line. The Court acknowledged that, as noted in the Gulf of Maine and Jan Mayen Cases, "… that a substantial difference in the lengths of the parties' respective coastlines may be a factor to be taken into consideration in order to adjust or shift the provisional delimitation line"[237]. The Court also concluded that it accepts that islands have sometimes been taken into account as a relevant circumstance in delimitation when such islands lay within the zone to be delimited and fell under the sovereignty of one of the parties[238].

[235] ICJ Reports 2002, para.226.
[236] ICJ Reports 2002, para. 294.
[237] ICJ Reports 2002, para. 300.
[238] ICJ Reports 2002, para. 299.

The case itself was not bearing these special circumstances and therefore the Court ruled in favor of the equidistance line; however it is significant in pointing out that these elements would come first before giving the final verdict. Thus, the Cameroon-Nigeria Case should be an example for all maritime delimitation disputes, including the Aegean continental shelf dispute; with regards to the priority it gives to the special circumstances to achieve an equitable result.

CONCLUSION

It is an irrefutable fact that the dispute in the Aegean needs to be resolved as early as possible, when both political and economic losses from dragging the issue on is taken into account. It is equally important to solve the matter in line with international legal rules and to agree on a solution on a mutual basis; where both sides will be satisfied of a fair result.

To come up with a solid and legally acceptable suggestion to deal with the continental shelf dispute necessitates the agreement of some common grounds between the two states at the first place. This should first of all include that the Aegean Sea is a common sea between Greece and Turkey where both countries should respect each other's vital interests. There is no sense in striving for a "Greek Lake" in the Aegean or ignoring the fundamental legal rights of islands that stem from international law.

Under the current law, both states have the right to claim to continental shelf areas in the Aegean Sea. Any definition of maritime areas should be based on mutual consent and should be beneficiary, fair and equitable for both parties.

Driving from this logic, the second thing to agree on should be the existence of several inter-related disputes in the Aegean that have a considerable effect on the continental shelf dispute. For this reason, it is a must for Greece and Turkey to negotiate their differences before going to an international court for the settlement of the dispute. By no means there is any possibility to have a permanent solution in the case of continental shelf, without taking into consideration the other disagreements, especially the volatility of the extent of the Greek territorial waters. In this context, negotiations should be held even in the case of referring the dispute to an international court; firstly to cover all the related issues and secondly to define what is ultimately demanded from the court.

Thirdly, it is not a high possibility that the Greek claims of an equidistant line would find support with regards to international law. Not only this claim is inconsistent with the geographical features of the Aegean, but also it ignores the most basic norms of delimitation; the natural prolongation and the existence of special circumstances that derives from the semi-enclosed nature of the sea and the extraordinary situations of the Greek islands.

For an equitable solution, those areas in the Aegean that are not territorial seas and do not belong to any of the countries under the title of continental shelf, should be divided into two, complying with the equity and fairness principle. This does not mean that the remaining areas should be distributed to Greece and Turkey evenly, but actually these areas can be shared taking into consideration the geographical depression that divides the sea from the north to the south. For instance in the North Aegean, the boundary line would be much closer to the Turkish mainland, due to the Meriç River and due to the

length of the Greek coast when compared to the Turkish in the region.[239]. This settlement will not only comply with international law, but it will also take into consideration fundamental security interests of both states.

There is no doubt that these conflicts will go on so long as no effort is made for negotiation. Some scholars argue that the best approach is to postpone the delimitation issue as long as possible, unless active exploration or exploitation of resources occur or is anticipated. Nevertheless, I maintain that Greece and Turkey can no longer afford to postpone the Aegean Sea disputes. Not only this situation increases tension in every single event, as it was in the Kardak Crisis, but it also stands as an obstacle in front of other bilateral relationships between the two states.

Especially in an era when Turkey goes for European Union membership, it can not bear any major conflicts with a member state, not to mention that Greece is a neighboring state both at the sea and the land. Since Turkey is accepted as a candidate state to the EU in December 1999, the obligation to settle the dispute at the Aegean Sea is felt profoundly. The decisions of the Helsinki Summit of 1999 and Agenda 2000 impose political and legal obligations to both sides to settle their major border disputes through peaceful means or to accept to refer their disputes to the ICJ. As opposed to the unwilling attitude of both states to open dialogue and solve the matter immediately, the EU factor forces the two Aegean states to discuss their disagreements. Although Greece and Turkey have shown efforts in this respect and conducted several meetings in the Prime Ministerial level in a variety of areas, no concrete solution for the maritime

[239] Yücel Acer. (2003), pp. 212-214.

delimitation issues in between has been put forward. Consequently, the two states can not avoid settling the dispute and needs to peacefully negotiate the issue in the short-term.

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APPENDICES

APPENDIX A

RELEVANT ARTICLES OF THE LAUSANNE PEACE TREATY
(24 JULY 1923)

SECTION I.
I. TERRITORIAL CLAUSES.
ARTICLE 2.

From the Black Sea to the Aegean the frontier of Turkey is laid down as follows: (I) With Bulgaria:

From the mouth of the River Rezvaya, to the River Maritza, the point of junction of the three frontiers of Turkey, Bulgaria and Greece:

the southern frontier of Bulgaria as at present demarcated;

(2) With Greece:

Thence to the confluence of the Arda and the Maritza:

the course of the Maritza;

then upstream along the Arda, up to a point on that river to be determined on the spot in the immediate neighborhood of the village of Tchorek-Keuy:

the course of the Arda;

thence in a south-easterly direction up to a point on the Maritza, 1 km. below Bosna-Keuy:

a roughly straight line leaving in Turkish territory the village of Bosna-Keuy. The village of Tchorek-Keuy shall be assigned to Greece or to Turkey according as the majority of the population shall be found to be Greek or Turkish by the Commission for which provision is made in Article 5, the population which has migrated into this village after the 11th October, 1922, not being taken into account;

thence to the AEgean Sea:

the course of the Maritza.

ARTICLE 5.

A Boundary Commission will be appointed to trace on the ground the frontier defined in Article 2 (2). This Commission will be composed of representatives of Greece and of

Turkey, each Power appointing one representative, and a president chosen by them from the nationals of a third Power.

They shall endeavor in all cases to follow as nearly as possible the descriptions given in the present Treaty, taking into account as far as possible administrative boundaries and local economic interests.

The decision of the Commission will be taken by a majority and shall be binding on the parties concerned.

The expenses of the Commission shall be borne in equal shares by the parties concerned.

ARTICLE 6.

In so far as concerns frontiers defined by a waterway as distinct from its banks, the phrases "course" or "channel" used in the descriptions of the present Treaty signify, as regards non-navigable rivers, the median line of the waterway or of its principal branch, and, as regards navigable rivers, the median line of the principal channel of navigation. It will rest with the Boundary Commission to specify whether the frontier line shall follow any changes of the course or channel which may take place, or whether it shall be definitely fixed by the position of the course or channel at the time when the present Treaty comes into force.

In the absence of provisions to the contrary, in the present Treaty, islands and islets Iying within three miles of the coast are included within the frontier of the coastal State.

ARTICLE 12.

The decision taken on the 13th February, 1914, by the Conference of London, in virtue of Articles 5 of the Treaty of London of the 17th-30th May, 1913, and 15 of the Treaty of Athens of the 1st-14th November, 1913, which decision was communicated to the Greek Government on the 13th February, 1914, regarding the sovereignty of Greece over the islands of the Eastern Mediterranean, other than the islands of Imbros, Tenedos and Rabbit Islands, particularly the islands of Lemnos, Samothrace, Mytilene, Chios, Samos and Nikaria, is confirmed, subject to the provisions of the present Treaty respecting the islands placed under the sovereignty of Italy which form the subject of Article 15.

Except where a provision to the contrary is contained in the present Treaty, the islands situated at less than three miles from the Asiatic coast remain under Turkish sovereignty.

ARTICLE 13.

With a view to ensuring the maintenance of peace, the Greek Government undertakes to observe the following restrictions in the islands of Mytilene, Chios, Samos and Nikaria:

(I) No naval base and no fortification will be established in the said islands.

(2) Greek military aircraft will be forbidden to fly over the territory of the Anatolian coast. Reciprocally, the Turkish Government will forbid their military aircraft to fly over the said islands.

(3) The Greek military forces in the said islands will be limited to the normal contingent called up for military service, which can be trained on the spot, as well as to a force of gendarmerie and police in proportion to the force of gendarmerie and police existing in the whole of the Greek territory.

ARTICLE 14.

The islands of Imbros and Tenedos, remaining under Turkish sovereignty, shall enjoy a special administrative organization composed of local elements and furnishing every guarantee for the native non-Moslem population in so far as concerns local administration and the protection of persons and property. The maintenance of order will be assured therein by a police force recruited from amongst the local population by the local administration above provided for and placed under its orders.

The agreements which have been, or may be, concluded between Greece and Turkey relating to the exchange of the Greek and Turkish populations will not be applied to the inhabitants of the islands of Imbros and Tenedos.

ARTICLE 15.

Turkey renounces in favor of Italy all rights and title over the following islands: Stampalia (Astrapalia), Rhodes (Rhodos), Calki (Kharki), Scarpanto, Casos (Casso), Piscopis (Tilos), Misiros (Nisyros), Calimnos (Kalymnos), Leros, Patmos, Lipsos (Lipso), Simi (Symi), and Cos (Kos), which are now occupied by Italy, and the islets dependent thereon, and also over the island of Castellorizzo.

ARTICLE 16.

Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present Treaty and the islands other than those over which her sovereignty is recognized by the said Treaty, the future of these territories and islands being settled or to be settled by the parties concerned.

The provisions of the present Article do not prejudice any special arrangements arising from neighborly relations which have been or may be concluded between Turkey and any limitrophe countries.

ARTICLE 20.

Turkey hereby recognizes the annexation of Cyprus proclaimed by the British Government on the sth November, 1914.

ARTICLE 21.

Turkish nationals ordinarily resident in Cyprus on the 5th November, 1914, will acquire British nationality subject to the conditions laid down in the local law, and will thereupon lose their Turkish nationality. They will, however, have the right to opt for Turkish nationality within two years from the coming into force of the present Treaty, provided that they leave Cyprus within twelve months after having so opted.

Turkish nationals ordinarily resident in Cyprus on the coming into force of the present Treaty who, at that date, have acquired or are in process of acquiring British nationality in consequence of a request made in accordance with the local law, will also thereupon lose their Turkish nationality.

It is understood that the Government of Cyprus will be entitled to refuse British nationality to inhabitants of the island who, being Turkish nationals, had formerly acquired another nationality without the consent of the Turkish Government.

ARTICLE 26.

Turkey hereby recognizes and accepts the frontiers of Germany, Austria, Bulgaria, Greece, Hungary, Poland, Roumania, the Serb-Croat-Slovene State and the Czechoslovak State, as these frontiers have been or may be determined by the Treaties referred to in Article 25 or by any supplementary conventions.

Source: http://www.hri.org/docs/lausanne/

APPENDIX B

TREATY OF NEUTRALITY, CONCILIATION AND ARBITRATION (30 OCTOBER 1930)

Traité d'Amitié, de Neutralité, de Conciliation et d'Arbitrage entre la République Turque et la République Hellénique

Le Président de la République Turque et le Président de la République Hellénique, soucieux de suivre, en toute circonstance, une politique de concorde, voulant affirmer leur désir de contribuer à l'oeuvre de la paix générale et de résoudre, selon les principes les plus élevés du Droit International public, les différends qui viendraient à s'élever entre la Turquie et la Grèce, ont décidé de réaliser dans un traité leur intention commune et ont désigné pour leurs plénipotentiaires:

LE PRÉSIDENT DE LA RÉPUBLIQUE TURQUE

Son Excellence İSMET PASA, Président du. Conseil des Ministres, Député de Malatya,

Son Excellence de Docteur TEVFİK RÜŞTÜ Bey, Ministre des Affaires Etrangères, Député d'Izmir;

LE PRÉSIDENT DE LA RÉPUBLIQUE HELLÉNIQUE

Son Excellence M. ELEFTHERIOS K. VÉNISÉLOS, Président du Conseil des Ministres,

Son Excellence M. ANDRÉ MICHALAKOPOULOS,

Vice-Président du Conseil des Ministres,

Ministre des Affaires Etrangères,

lesquels, après s'être communiqués leurs pleins pouvoirs trouvés en bonne et due forme, sont convenus des dispositions suivantes;

ARTICLE 1.

Les Hautes Parties Contractantes s'engagent réciproquement à n'entrer dans aucune entente d'ordre politique ou économique et dans aucune combinaison dirigée contre l'une d'elles.

ARTICLE 2.

Au cas où l'une des Hautes Parties Contractantes, malgré son attitude pacifique, serait l'objet d'une agression de la part d'une ou de plusieurs Puissances, l'autre Partie s'engage à observer la neutralité pendant toute la durée du conflit.

ARTICLE 3.

Les Hautes Parties Contractantes s'engagent à soumettre à la procédure de conciliation prévue dans les articles 8-19 ci-après toutes les questions qui viendraient à les diviser et qui n'auraient pu être résolues par les procédés diplomatiques ordinaires. En cas de non réussite de la procédure de conciliation, un règlement judiciaire sera recherché conformément aux articles 20-23 du présent Traité, à moins que les Parties ne tombent d'accord pour recourir à un tribunal arbitral constitué conformément aux articles 55 et suivants de la Convention pour le règlement pacifique des conflits internationaux du 18 octobre 1907 ou à tout autre accord existant entre elles.

ARTICLE 4.

Les dispositions de l'article précédent ne s'appliquent pas aux questions qui, en vertu des Traités en vigueur entre les Hautes Parties Contractantes, rentrent dans la compétence de l'une d'Elles, ni aux questions qui se rapportent au droit de souveraineté. Chacune des Parties aura le droit de déterminer, par une déclaration écrite, si une question relève du droit de souveraineté, l'autre Partie pouvant, en cas de contestation, recourir à l'arbitrage ou à la Cour Permanente de Justice Internationale pour faire décider de cette question préjudicielle.

Les dispositions de l'article précédent ne s'appliquent également pas aux différends nés de faits qui sont antérieurs au présent Traité et qui appartiennent au passé.

ARTICLE 5.

Les différends pour la solution desquels une procédure spéciale serait prévue par d'autres conventions en vigueur entre les parties en litige, seront réglés conformément aux dispositions de ces conventions.

ARTICLE 6.

S'il s'agit d'un différent dont l'objet, d'après la législation intérieure de l'une des Parties, relève de la compétence des autorités judiciaires ou administratives, cette Partie pourra s'opposer à ce que ce différend soit soumis aux diverses procédures prévues par le présent Traité, avant qu'une décision définitive ait été rendu dans des délais raisonnables par l'autorité compétente.

La Partie qui, dans ce cas, voudra recourir aux procédures prévues par le présent Traité devra notifier à l'autre Partie son intention dans un délai d'un an à partir de la décision susvisée.

ARTICLE 7.

Sur la demande adressée par l'une des Parties Contractantes à l'autre Pa commission permanente de conciliation sera constituée dans les six mois qui l'échange des ratifications du présent Traité.

Sauf accord contraire des parties, la commission de conciliation sera constituée de suivante:

1. La commission comprendra cinq membres. Les Parties en nommeront cha choisi parmi leurs nationaux respectifs. Les trois autres commissaires seront cho commun accord parmi les ressortissants de tierces puissances. Ces derniers dev de nationalités différentes, ne pas avoir leur résidence habituelle sur le terri Parties, ni se trouver à leur service. Parmi eux, les Parties désigneront le présid Commission et, en cas de désaccord, le sort déterminera, lequel des trois Comr sera le président.

2. Les Commissaires seront nommés pour trois ans et seront rééligibles. Les Comr nommés en commun pourront être remplacés au cours de leur mandat, avec l'ac Parties. Tant que le procédure n'est pas ouverte, chacune des Parties aura le procéder au remplacement du commissaire nommé par elle.

3. Il sera pourvu, dans le plus bref délai, aux vacances qui viendraient à se proc suite de décès ou de démission ou tout autre empêchement, suivant le mode fixé nominations.

ARTICLE 8.

Si, lorsqu'il s'élève un différend, il n'existe pas une commission permanente de con nommée par les Parties, une commission spéciale de conciliation sera constitu l'examen du différend dans un délai de trois mois à compter de la demande adre l'une des Parties à l'autre. Les nominations se feront conformément aux disposi l'article précédent, à moins que les Parties n'en décident autrement.

ARTICLE 9.

Si la nomination des Commissaires à désigner en commun n'intervient pas dans l prévus aux articles 10 et 12, le soin de procéder aux nominations nécessaires sera une tierce puissance choisie d'un commun accord par les Parties et si l'accord ne pas à ce sujet, chaque Partie désignera une puissance différente et les nomination faites de concert par les puissances ainsi choisies. Enfin, si dans un délai de trois n deux puissances n'ont pu tomber d'accord, chacune d'elles présentera des cand nombre égal à celui des membres à désigner. Le sort déterminera lesquels des c ainsi présentés seront admis.

ARTICLE 10.

La Commission de conciliation sera saisie par voie de requête adressée au président par les deux Parties agissant d'un commun accord ou, à défaut, par l'une ou l'autre des Parties.

La requête, après avoir exposé sommairement l'objet du litige, contiendra l'invitation à la Commission de procéder à toutes mesures propres à conduire à une conciliation.

Si la requête émane d'une seule des Parties, elle sera notifiée par celle-ci sans délai à l'autre Partie.

ARTICLE 11.

Dans un délai de quinze jours à partir de la date où l'une des Parties aura porté un différend devant la commission de conciliation, chacune des Parties pourra, pour l'examen de ce différend, remplacer son commissaire par une personne possédant une compétence spéciale en la matière. La Partie qui usera de ce droit en fera immédiatement la notification à l'autre Partie, celle-ci aura, dans ce cas, la faculté d'agir de même dans un délai de quinze jours à compter de la date où la notification lui sera parvenue.

ARTICLE 12.

La Commission de conciliation se réunira, sauf accord contraire des Parties, au lieu désigné par son Président.

ARTICLE 13.

La Commission de conciliation aura pour tâche d'élucider les questions en litige, de recueillir à cette fin toutes les informations utiles et de s'efforcer de concilier les Parties.

Après examen de l'affaire, elle formulera, dans un rapport, les propositions en vue du règlement du différend.

ARTICLE 14.

La Commission de conciliation réglera elle-même sa procédure qui, dans tous les cas, devra être contradictoire en tenant compte, si elle n'en décide autrement à l'unanimité, des dispositions du titre III de la Convention de la Haye du 18 Octobre 1907 pour le règlement pacifique des conflits internationaux.

ARTICLE 15.

Les travaux de la Commission de conciliation ne seront publics qu'en vertu d'une décision prise par la Commission avec l'assentiment des Parties.

ARTICLE 16.

Les Parties seront représentées auprès de la Commission de conciliation par des agents ayant mission de servir d'intermédiaires entre elles et la Commission; elles pourront, en outre, se faire assister par des conseils et experts nommés par elles à cet effet et demander l'audition de toutes personnes dont le témoignage leur paraîtrait utile.

La Commission aura, de son côté, la faculté de demander des explications orales aux agents, conseils et experts des deux Parties ainsi qu'à toutes personnes qu'elle jugerait utile de faire comparaître avec l'assentiment de leur Gouvernement.

ARTICLE 17.

Les Parties s'engagent à faciliter les travaux de la Commission de conciliation et, en particulier, à lui fournir, dans la plus large mesure possible, tous documents et informations utiles, ainsi qu'à user des moyens dont elles disposent pour lui permettre de procéder sur leur territoire et selon leur législation à la citation et à l'audition de témoins ou d'experts et à des transports sur les lieux.

ARTICLE 18.

La Commission de conciliation présentera son rapport dans les quatre mois à partir du jour où elle aura été saisie du différend, à moins que les Parties ne conviennent de proroger ce délai.

Un exemplaire du rapport sera remis à chacune des Parties. Le rapport n'aura, ni quant à l'exposé des faits, ni quant aux considérants juridiques et aux conclusions, le caractère d'une sentence arbitrale.

ARTICLE 19.

La Commission de conciliation fixera le délai dans lequel les Parties auront à se prononcer au sujet des propositions de réglement contenues dans son rapport. Ce délai ne dépassera pas trois mois.

ARTICLE 20.

Pendant la durée effective de la procédure, chacun des commissaires nommés d'un commun accord recevra une indemnité dont le montant sera arrêté par les Parties et payé par elles dans une égale mesure. Chaque Partie, par contre, fixera et payera l'indemnité du membre de la commission nommé par elle.

Les frais généraux occasionnés par le fonctionnement de la Commission seront supportés également par les deux Parties.

ARTICLE 21.

Si les recommandations de la Commission ne sont pas acceptées par les deux Parties, chacune d'elles aura la faculté de soumettre le différend à la Cour Permanente de Justice Internationale, dans le délai fixé par le rapport de la Commission.

Dans le cas où, de l'avis de la Cour, le litige ne serait pas d'ordre juridique, les Parties conviennent qu'elle pourra le trancher ex aequo et bono, si une règle du droit international ne peut pas lui être appliquée.

ARTICLE 22.

Les Parties Contractantes établiront, dans chaque cas particulier, un compromis spécial déterminant nettement l'objet du différend, les compétences particulières qui pourraient être dévolues à la Cour Permanente de Justice Internationale, ainsi que toutes autres conditions arrêtées entre elles.

Le compromis sera établi par échange de notes entre les gouvernements des Parties Contractantes et sera interprété en tous points par la Cour de Justice. Si le texte du compromis n'est pas arrêté dans les trois mois à compter du jour où l'une des Parties a été saisie d'une demande aux fins de règlement judiciaire, chaque Partie pourra saisir la Cour de justice par voie de simple requête.

ARTICLE 23.

Si la Cour Permanente de Justice Internationale établissait qu'une décision d'une instance judiciaire ou de toute autre autorité relevant de l'une des Parties Contractantes se trouve entièrement ou partiellement en opposition avec cette Partie et ne permettait pas ou ne permettait qu'imparfaitement d'effacer les conséquences de la décision dont il s'agit, les Parties conviennent qu'il devra êtra accordé par la sentence de la Cour à la Partie lésée une satisfaction équitable.

ARTICLE 24.

L'arrêt rendu par la Cour Permanente de Justice Internationale sera exécuté de bonne foi par les Parties.

Les difficultés auxquelles son interprétation pourrait donner lieu seront tranchées par la Cour de Justice, que chacune des Parties pourra saisir à cette fin par voie de simple requête.

ARTICLE 25.

Durant le cours de la procédure de conciliation ou de la procédure judiciaire, les Parties Contractantes s'abstiendront de toute mesure pouvant avoir une répercussion préjudiciable à l'acceptation des propositions de la Commission de conciliation ou à l'exécution de l'arrêt de la Cour Permanente de Justice Internationale.

ARTICLE 26.

Si une procédure de conciliation ou une procédure judiciaire est pendante lors de l'expiration du présent Traité, elle suivra son cours conformément aux dispositions du présent Traité ou de toute autre convention que les Parties seraient convenues de lui substituer.

ARTICLE 27.

Les contestations qui pourraient surgir soit dans l'interprétation, soit dans l'exécution du présent Traité, y compris celles relatives à la qualification des litiges, seront soumises directement, par une simple demande, à la Cour Permanente de Justice Internationale.

ARTICLE 28.

Le présent Traité sera ratifié dans le plus bref délai possible et entrera en vigueur immédiatement après l'échange des ratifications. Il est conclu pour la durée de cinq ans à compter de son entrée en vigueur. S'il n'est pas dénoncé six mois avant l'expiration de ce terme, il sera considéré comme renouvelé pour une seconde période de cinq ans et ainsi de suite.

En foi de quoi, les Plénipotentiaires susnommés ont signé le présent Traité.

Fait à Ankara le 30 Octobre 1930.

İSMET
Dr.T. RÜŞTÜ

E.K.VÉNISÉLOS
A.MICHALAKOPOULOS

Source: Kılıç, Hulusi. *Bilateral Agreements, Essential Documents and Declarations between Turkey and Greece since the Proclamation of the Turkish Republic Ministry of Foreign Affairs of the Republic of Turkey*, (Ankara: Deputy Directorate General for Maritime and Aviation Affairs, 2000)

APPENDIX C

THE PACT OF CORDIAL FRIENDSHIP
(14 September 1933)

Pacte d'Entente Cordiale
entre
La Turquie et la Grèce

La Turquie et la Grèce fidèlement attachées à leur politique d'amitié, d'entente et de collaboration cordiale.

Décidées à assurer le développement constant de cette politique dont les effets se ressentent dans tous les domaines de leur activité nationale et internationale s'inspirant d'autre part de l'esprit du pacte Briand-Kellog et d'autres actes internationaux dont elles sont signataires et désireuses de donner un nouveau témoignage solennel de leur attachement à la cause de la paix.

Ont résolu de conclure un pacte et elles ont nommé à cet effet leurs Plénipotentiaires, à savoir:

Monsieur le Président de la République Turque:

Son Excellence Ismet Paşa, Président du Conseil des Ministres, Député de Malatya.

Son Excellence le Dr. Tevfik Rüştü Bey, Ministre des Affaires Etrangères, Député d'Izmir;

Monsieur le Président de la République Hellénique:

Son Excellence Monsieur Panaghis Tchaldaris, Président du Conseil des Ministres;

Son Excellence Monsieur Demétre Maximos, Ministre des Affaires Etrangères;

Lesquels, aprés s'être communiqués leurs pleins prouvoirs, trouvés en bonne due forme, ont arrêté:

ARTICLE 1.

La Turquie et la Grèce garantissent mutuellement l'inviolabilité de leurs frontières communes.

ARTICLE 2.

Les Hautes Parties Contractantes conviennent que dans toutes les questions d'ordre international pouvant présenter un intérêt pour Elles, une consultation préalable est conforme à la directive générale de leur politique d'entente et de collaboration et à leurs intérêts respectifs et communs.

ARTICLE 3.

Dans toutes les réunions internationales à représentation limitée, la Turquie et la Grèce sont disposées à considérer que le délégué de l'une d'elles aura la mission de défendre les intérêts communs et particuliers des deux Parties et elles s'engagent à unir leurs efforts pour assurer cette représentation commune soit à tour de rôle à chacune d'Elles soit dans des cas particuliers d'intérêts spéciaux au pays le plus intéressé.

ARTICLE 4.

Le présent Pacte est conclu pour une durée de dix ans.

S'il n'est pas dénoncé par l'une des Hautes Parties Contractantes une année avant la date de son expiration, il restera en vigueur pour une nouvelle période de dix ans.

ARTICLE 5.

Le présent Pacte sera ratifié, les ratifications seront échangées à Athènes aussi vite que possible. Il entrera en vigueur à partir de la dernière ratification qui sera communiquée par note à l'autre Partie Contractante.

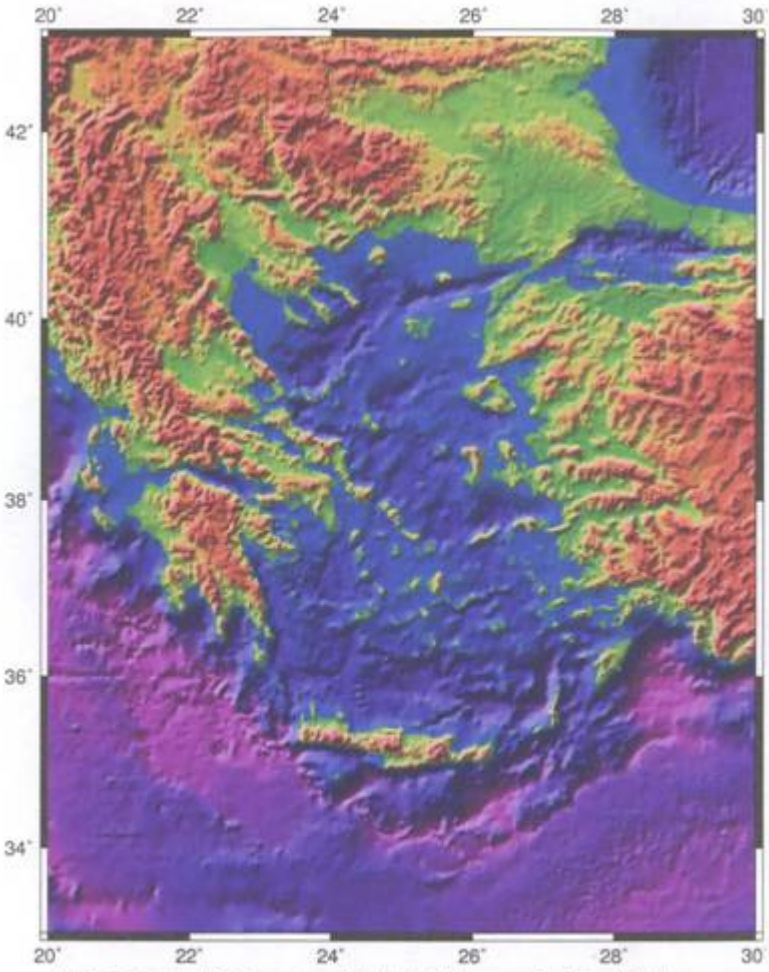
Fait à Ankara, le quatorze septembre mil neuf cent trente-trois.

İsmet
Dr. T. Rüştü

P. Tebahlaris
D. Maxinos

Source: Kılıç, Hulusi. *Bilateral Agreements, Essential Documents and Declarations between Turkey and Greece since the Proclamation of the Turkish Republic Ministry of Foreign Affairs of the Republic of Turkey*, (Ankara: Deputy Directorate General for Maritime and Aviation Affairs, 2000)

APPENDIX D
THE BATHIMETRIC MAP OF THE AEGEAN SEA



Şekil 2.4.2. Ege Denizi ve çevresinin batimetrik ve morfolojik özellikleri (Genç, 1997).

Figure 2.4.2. Bathimetric and morphological features of the Aegean Sea and surrounding regions (Genç, 1997).

Source: www.izmir.bel.tr

APPENDIX E

RELEVANT ARTICLES OF THE UN CONVENTION ON THE LAW OF THE SEA

Article76

Definition of the continental shelf

1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.

3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:

(i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or

(ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

(b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.

5. The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

9. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.

10. The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

Article77

Rights of the coastal State over the continental shelf

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are

immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

Article78

Legal status of the superjacent waters and air space

and the rights and freedoms of other States

1. The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters.

2. The exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention.

Article79

Submarine cables and pipelines on the continental shelf

1. All States are entitled to lay submarine cables and pipelines on the continental shelf, in accordance with the provisions of this article.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines, the coastal State may not impede the laying or maintenance of such cables or pipelines.

3. The delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the coastal State.

4. Nothing in this Part affects the right of the coastal State to establish conditions for cables or pipelines entering its territory or territorial sea, or its jurisdiction over cables and pipelines constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.

5. When laying submarine cables or pipelines, States shall have due regard to cables or pipelines already in position. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article80

Artificial islands, installations and structures on the continental shelf

Article 60 applies *mutatis mutandis* to artificial islands, installations and structures on the continental shelf.

Article81

Drilling on the continental shelf

The coastal State shall have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes.

Article82

Payments and contributions with respect to the

exploitation of the continental shelf beyond 200 nautical miles

1. The coastal State shall make payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

2. The payments and contributions shall be made annually with respect to all production at a site after the first five years of production at that site. For the sixth year, the rate of payment or contribution shall be 1 per cent of the value or volume of production at the site. The rate shall increase by 1 per cent for each subsequent year until the twelfth year and shall remain at 7 per cent thereafter. Production does not include resources used in connection with exploitation.

3. A developing State which is a net importer of a mineral resource produced from its continental shelf is exempt from making such payments or contributions in respect of that mineral resource.

4. The payments or contributions shall be made through the Authority, which shall distribute them to States Parties to this Convention, on the basis of equitable sharing criteria, taking into account the interests and needs of developing States, particularly the least developed and the land-locked among them.

Article83

Delimitation of the continental shelf

between States with opposite or adjacent coasts

1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement.

Article84

Charts and lists of geographical coordinates

1. Subject to this Part, the outer limit lines of the continental shelf and the lines of delimitation drawn in accordance with article 83 shall be shown on charts of a scale or scales adequate for ascertaining their position. Where appropriate, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.

2. The coastal State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations and, in the case of those showing the outer limit lines of the continental shelf, with the Secretary-General of the Authority.

Article85

Tunnelling

This Part does not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling, irrespective of the depth of water above the subsoil.

Article121

Regime of islands

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.

3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

Article122

Definition

For the purposes of this Convention, "enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

Article123

Cooperation of States bordering enclosed or semi-enclosed seas

States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:

(a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;

(b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;

(c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;

(d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.

Article300

Good faith and abuse of rights

States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right

Source: http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm

APPENDIX F
THE GENEVA CONVENTION ON THE CONTINENTAL SHELF
(21 APRIL 1958)

The States Parties to this Convention,

Have agreed as follows:

Article 1

For the purpose of these articles, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Article 2

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

Article 3

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters.

Article 4

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipe lines on the continental shelf.

Article 5

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

3. The safety zones referred to in paragraph 2 of this article may extend to a distance of 500 metres around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones.

4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

6. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

7. The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.

8. The consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published.

Article 6

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining

to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

Article 7

The provisions of these articles shall not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling irrespective of the depth of water above the subsoil.

Article 8

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

Article 9

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 10

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 8. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 11

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 12

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1 to 3 inclusive.

2. Any Contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 13

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 14

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 8:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 8, 9 and 10;
(b) Of the date on which this Convention will come into force, in accordance with article 11;
(c) Of requests for revision in accordance with article 13;
(d) Of reservations to this Convention, in accordance with article 12.

Article 15

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 8.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

Source: http://www.oceanlaw.net/texts/genevacs.htm

APPENDIX G

LIST OF MEMBER STATES TO UNCLOS

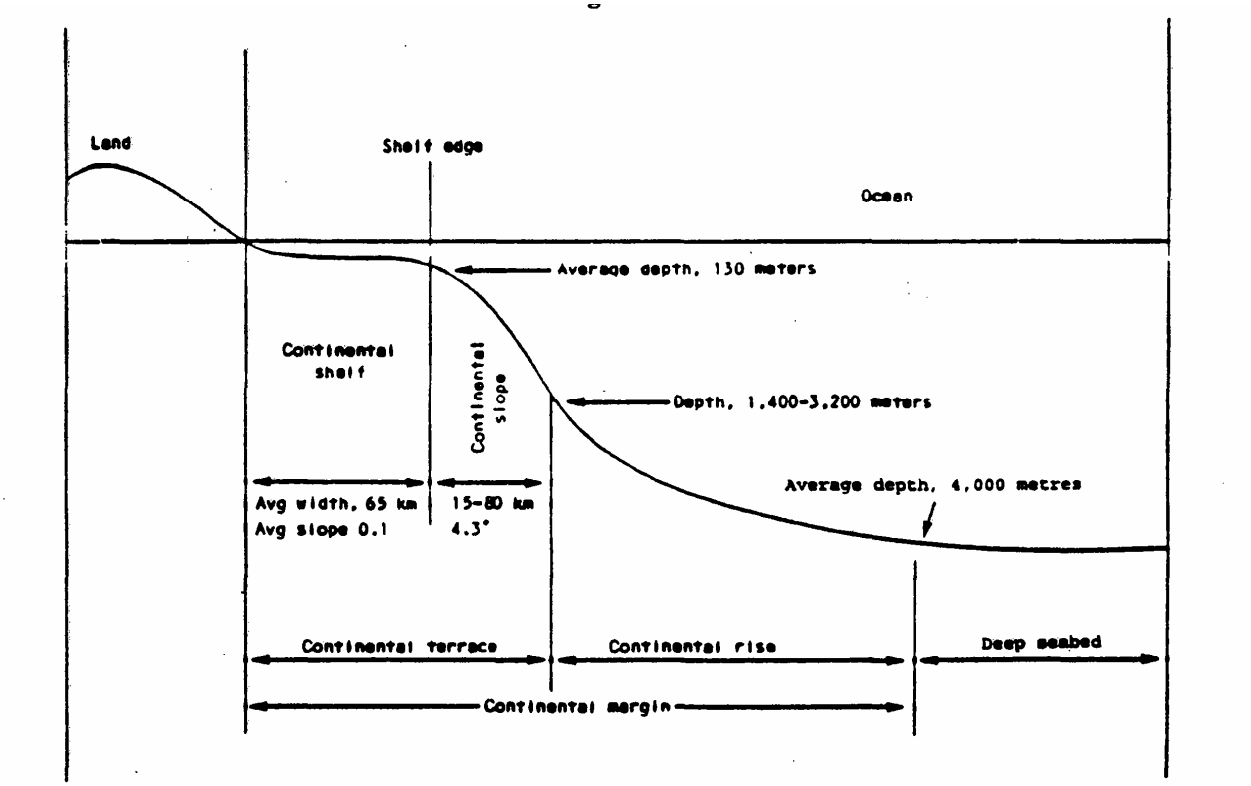
Albania (23 June 2003)
Algeria (11 June 1996)
Angola (5 December 1990)
Antigua and Barbuda (2 February 1989)
Argentina (1 December 1995)
Armenia (9 December 2002)
Australia (5 October 1994)
Austria (14 July 1995)
Bahamas (29 July 1983)
Bahrain (30 May 1985)
Bangladesh (27 July 2001)
Barbados (12 October 1993)
Belgium (13 November 1998)
Belize (13 August 1983)
Benin (16 October 1997)
Bolivia (28 April 1995)
Bosnia and Herzegovina (12 January 1994)
Botswana (2 May 1990)
Brazil (22 December 1988)
Brunei Darussalam (5 November 1996)
Bulgaria (15 May 1996)
Burkina Faso (25 January 2005)
Cameroon (19 November 1985)
Canada (7 November 2003)
Cape Verde (10 August 1987)
Chile (25 August 1997)
China (7 June 1996)
Comoros (21 June 1994)
Cook Islands (15 February 1995)
Costa Rica (21 September 1992)
Côte d'Ivoire (26 March 1984)
Croatia (5 April 1995)
Cuba (15 August 1984)
Cyprus (12 December 1988)
Czech Republic (21 June 1996)
Democratic Republic of the Congo (17 February 1989)
Denmark (16 November 2004)
Djibouti (8 October 1991)
Dominica (24 October 1991)
Egypt (26 August 1983)
Equatorial Guinea (21 July 1997)
Estonia (26 August 2005)
European Community (1 April 1998)
Fiji (10 December 1982)
Finland (21 June 1996)
France (11 April 1996)
Gabon (11 March 1998)
Gambia (22 May 1984)

Georgia (21 March 1996)
Germany (14 October 1994)
Ghana (7 June 1983)
Greece (21 July 1995)
Grenada (25 April 1991)
Guatemala (11 February 1997)
Guinea (6 September 1985)
Guinea-Bissau (25 August 1986)
Guyana (16 November 1993)
Haiti (31 July 1996)
Honduras (5 October 1993)
Hungary (5 February 2002)
Iceland (21 June 1985)
India (29 June 1995)
Indonesia (3 February 1986)
Iraq (30 July 1985)
Ireland (21 June 1996)
Italy (13 January 1995)
Jamaica (21 March 1983)
Japan (20 June 1996)
Jordan (27 November 1995)
Kenya (2 March 1989)
Kiribati (24 February 2003)
Kuwait (2 May 1986)
Lao People's Democratic Republic (5 June 1998)
Latvia (23 December 2004)
Lebanon (5 January 1995)
Lithuania (12 November 2003)
Luxembourg (5 October 2000)
Madagascar (22 August 2001)
Malaysia (14 October 1996)
Maldives (7 September 2000)
Mali (16 July 1985)
Malta (20 May 1993)
Marshall Islands (9 August 1991)
Mauritania (17 July 1996)
Mauritius (4 November 1994)
Mexico (18 March 1983)
Micronesia (Federated States of) (29 April 1991)
Monaco (20 March 1996)
Mongolia (13 August 1996)
Mozambique (13 March 1997)
Myanmar (21 May 1996)
Namibia (18 April 1983)
Nauru (23 January 1996)
Nepal (2 November 1998)
Netherlands (28 June 1996)
New Zealand (19 July 1996)
Nicaragua (3 May 2000)
Nigeria (14 August 1986)
Norway (24 June 1996)
Oman (17 August 1989)
Pakistan (26 February 1997)
Palau (30 September 1996)

Panama (1 July 1996)
Papua New Guinea (14 January 1997)
Paraguay (26 September 1986)
Philippines (8 May 1984)
Poland (13 November 1998)
Portugal (3 November 1997)
Qatar (9 December 2002)
Republic of Korea (29 January 1996)
Romania (17 December 1996)
Russian Federation (12 March 1997)
Saint Kitts and Nevis (7 January 1993)
Saint Lucia (27 March 1985)
Saint Vincent and the Grenadines (1 October 1993)
Samoa (14 August 1995)
Sao Tome and Principe (3 November 1987)
Saudi Arabia (24 April 1996)
Senegal (25 October 1984)
Serbia and Montenegro (12 March 2001)
Seychelles (16 September 1991)
Sierra Leone (12 December 1994)
Singapore (17 November 1994)
Slovakia (8 May 1996)
Slovenia (16 June 1995)
Solomon Islands (23 June 1997)
Somalia (24 July 1989)
South Africa (23 December 1997)
Spain (15 January 1997)
Sri Lanka (19 July 1994)
Sudan (23 January 1985)
Suriname (9 July 1998)
Sweden (25 June 1996)
The former Yugoslav Republic of Macedonia (19 August 1994)
Togo (16 April 1985)
Tonga (2 August 1995)
Trinidad and Tobago (25 April 1986)
Tunisia (24 April 1985)
Tuvalu (9 December 2002)
Uganda (9 November 1990)
Ukraine (26 July 1999)
United Kingdom of Great Britain and Northern Ireland (25 July 1997)
United Republic of Tanzania (30 September 1985)
Uruguay (10 December 1992)
Vanuatu (10 August 1999)
Viet Nam (25 July 1994)
Yemen (21 July 1987)
Zambia (7 March 1983)
Zimbabwe (24 February 1993)

Source:
Http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm

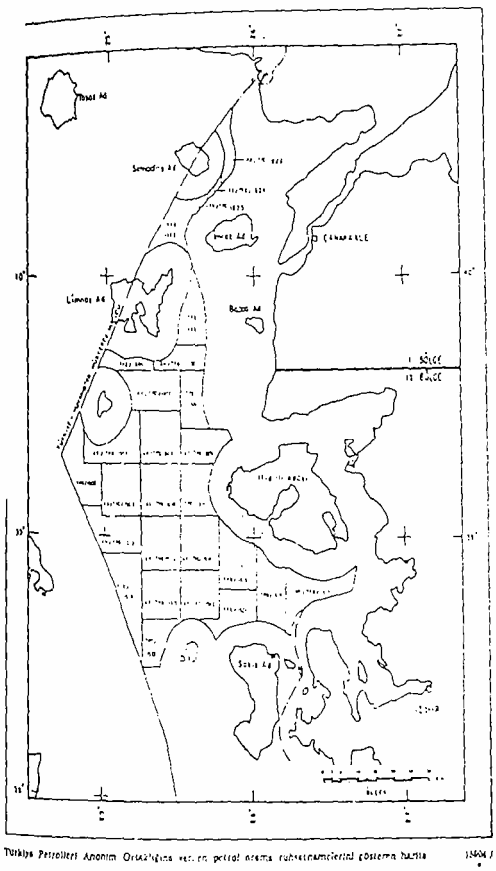
APPENDIX H
THE ILLUSTRATION OF THE CONTINENTAL SHELF



Source: V.E. McKelvey, *Interpreation of the UNCLOS III Definiton of the Continental Shelf,* in D.M. Johnston and N.G. Letalik (Ed.s), *The Law of the Sea and Ocean Industry: New Opportunities and Restraints.* Proceedings of the 16th annual Conference of the Law of the Sea Institute, Halifax, Nova Scotia, 1982, (Honolulu, 1984), p.466.

APPENDIX I

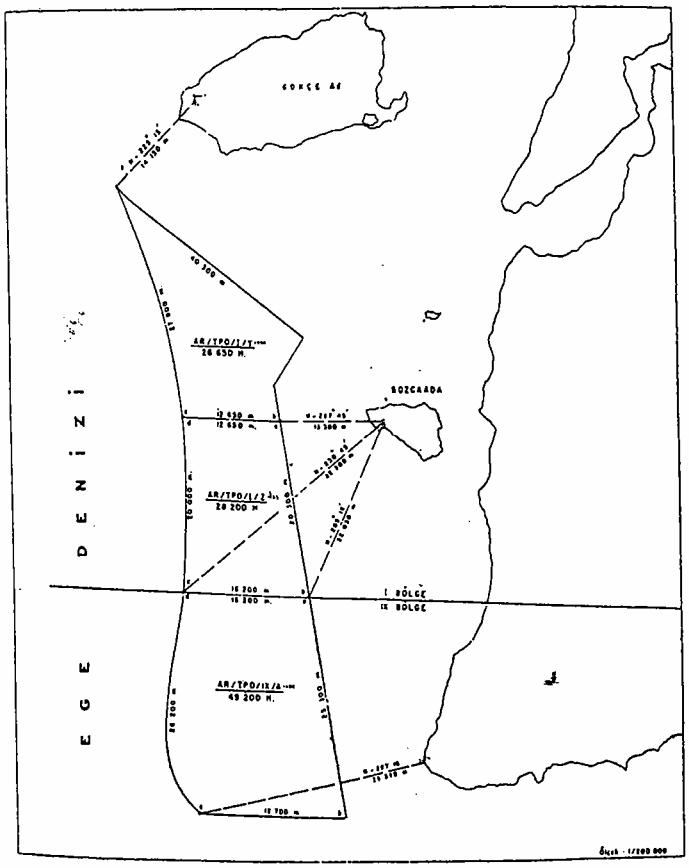
THE CHART PUBLISHED IN TURKISH OFFICIAL GAZETTE (1 NOVEMBER 1973)



Source: Bölükbaşı, Deniz. *Turkey and Greece: The Aegean Disputes, A Unique Case in International Law*, (London: Cavendish Publishing Limited, 2004)

APPENDIX J

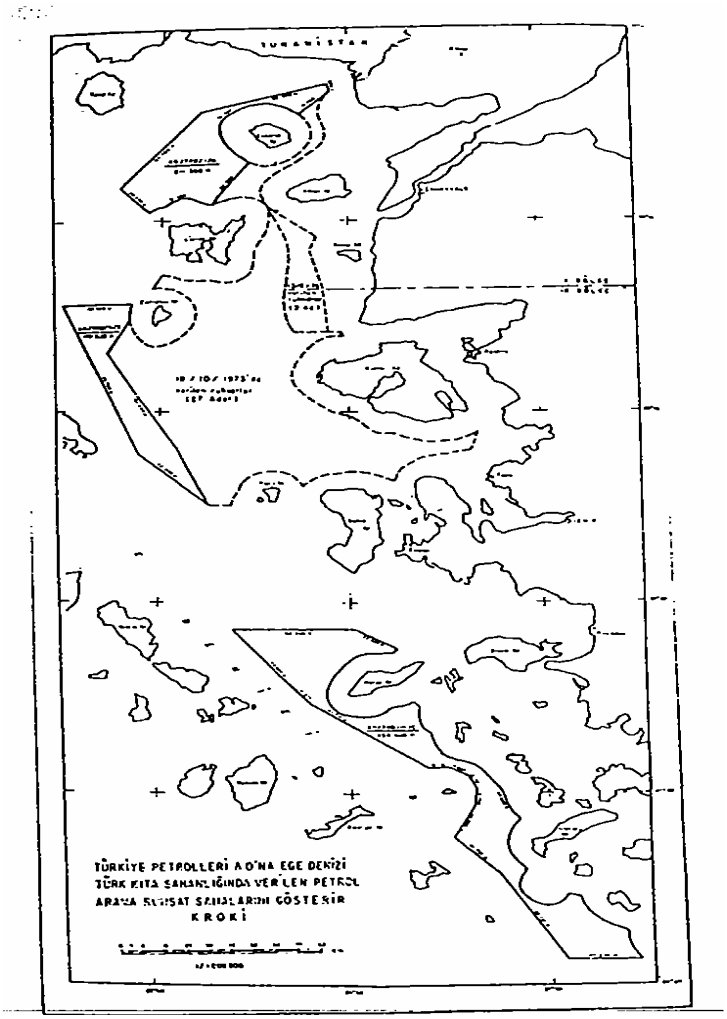
THE CHART PUBLISHED IN TURKISH OFFICIAL GAZETTE (6 JUNE 1974)



Source: Bölükbaşı, Deniz. *Turkey and Greece: The Aegean Disputes, A Unique Case in International Law*, (London: Cavendish Publishing Limited, 2004)

APPENDIX K

THE CHART PUBLISHED IN TURKISH OFFICIAL GAZETTE (18 JULY 1974)



Source: Bölükbaşı, Deniz. *Turkey and Greece: The Aegean Disputes, A Unique Case in International Law*, (London: Cavendish Publishing Limited, 2004)

APPENDIX L

BRUSSELS COMMUNIQUE
(31 May 1975)

2. Communiqué conjoint, Bruxelles, 31 mai 1975

Au cours de leur rencontre les deux premiers ministres ont eu l'occasion de procéder à l'examen des problèmes qui conduisirent à la situation actuelle les relations de leurs pays.

Ils ont décidé que ces problèmes doivent être résolus pacifiquement par la voie des négociations et concernant le plateau continental de la mer Egée par la Cour internationale de La Haye. Ils ont défini les lignes générales sur la base desquelles auront lieu les rencontres prochaines des représentants des deux gouvernements.

A cet égard ils ont décidé d'accélérer la rencontre d'experts concernant la question du plateau continental de la mer Egée, ainsi que celle des experts sur la question de l'espace aérien.

Les deux premiers ministres se sont trouvés d'accord que de part et d'autre des efforts soient faits aux fins de la création et du maintien d'un bon climat dans les relations entre la Grèce et la Turquie de sorte que les problèmes existants puissent être résolus et que les deux pays soient amenés au rétablissement de leur coopération à leur avantage mutuel.

Enfin, les deux premiers ministres se sont trouvés d'accord pour apporter leur appui aux négociations intercommunautaires de Vienne.

Bruxelles, le 31 mai 1975.

Source: *Aegean Sea Continental Shelf Case (Greece v. Turkey),* International Court of Justice Pleadings, Oral Arguments, Documents, (Netherlands: 1980)

APPENDIX M

SECURITY COUNCIL RESOLUTION No. 395

D. COMPLAINT BY GREECE AGAINST TURKEY

Decision

At its 1949th meeting, on 12 August 1976, the Council decided to invite the representatives of Greece and Turkey to participate, without vote, in the discussion of the item entitled "Complaint by Greece against Turkey: letter dated 10 August 1976 from the Permanent Representative of Greece to the United Nations addressed to the President of the Security Council (S/12167)".[53]

53 See *Official Records of the Security Council, Thirty-first Year, Supplement for July, August and September 1976.*

Resolution 395 (1976)

of 25 August 1976

The Security Council,

Taking note of the letter of the Permanent Representative of Greece dated 10 August 1976,[54]

Having heard and noted the various points made in the statements by the Ministers for Foreign Affairs of Greece[55] and Turkey,[56]

54 *Ibid.*, document S/12167.

55 *Ibid., Thirty-first Year*, 1949th meeting.

56 *Ibid.*, 1950th meeting.

Expressing its concern over the present tensions between Greece and Turkey in relation to the Aegean Sea,

Bearing in mind the principles of the Charter of the United Nations concerning the peaceful settlement of disputes, as well as the various provisions of Chapter VI of the Charter concerning procedures and methods for the peaceful settlement of disputes,

Noting the importance of the resumption and continuance of direct negotiations between Greece and Turkey to resolve their differences,

Conscious of the need for the parties both to respect each other's international rights and obligations and to avoid any incident which might lead to the aggravation of the situation and which, consequently, might compromise their efforts towards a peaceful solution,

1. *Appeals* to the Governments of Greece and Turkey to exercise the utmost restraint in the present situation;

2. *Urges* the Governments of Greece and Turkey to do everything in their power to reduce the present tensions in the area so that the negotiating process may be faciliated;

3. *Calls upon* the Governments of Greece and Turkey to resume direct negotiations over their differences and appeals to them to do everything within their power to ensure that these negotiations will result in mutually acceptable solutions;

4. *Invites* the Governments of Greece and Turkey in this respect to continue to take into account the contribution that appropriate judicial means, in particular the International Court of Justice, are qualified to make to the settlement of any remaining legal differences which they may identify in connexion with their present dispute.

Adopted at the 1953rd meeting by consensus.

Source: http://www.un.org/documents/sc/res/1976/scres76.htm

APPENDIX N

ACTE GENERAL POUR LE REGLEMENT PACIFIQUE DES DIFFERENDS INTERNATIONAUX

(26 September 1928)

Article 1

Les différends de toute nature entre deux ou plusieurs Parties ayant adhéré au présent Acte général qui n'auraient pu être résolus par la voie diplomatique seront, sauf les réserves éventuelles prévues à l'art. 39, soumis à la procédure de conciliation dans les conditions prévues au présent chapitre.

Article 17

Tous différends au sujet desquels les parties se contesteraient réciproquement un droit seront, sauf les réserves éventuelles prévues à l'art. 39, soumis pour jugement à la Cour permanente de Justice internationale, à moins que les parties ne tombent d'accord, dans les termes prévus ci—après, pour recourir à un tribunal arbitral. Il est entendu que les différends ci—dessus visés comprennent notamment ceux que mentionne l'art. 36 du Statut de la Cour permanente de Justice internationale.

Article 33

1. Dans tous les cas où le différend fait l'objet d'une procédure arbitrale ou judiciaire, notamment si la question au sujet de laquelle les parties sont divisées, résulte d'actes déjà effectués ou sur le point de l'être, la Cour permanente de Justice internationale, statuant conformément à l'art. 41 de son Statut, ou le tribunal arbitral, indiquera, dans le plus bref délai possible, quelles mesures provisoires doivent être prises. Les parties en litige seront tenues de s'y conformer.
2. Si une Commission de conciliation se trouve saisie du différend, elle pourra recommander aux parties les mesures provisoires qu'elle estimera utiles.
3. Les parties s'engagent à s'abstenir de toute mesure susceptible d'avoir une répercussion préjudiciable à l'exécution de la décision judiciaire ou arbitrale ou aux arrangements proposés par la Commission de conciliation, et, en général, à ne procéder à aucun acte, de quelque nature qu'il soit, susceptible d'aggraver ou d'étendre le différend.

Article 38

Les adhésions au présent Acte général pourront s'appliquer:

A. Soit à l'ensemble de l'Acte (chap. I, II, III et IV);

B. Soit seulement aux dispositions relatives à la conciliation et au règlement judiciaire (chap. I et II), ainsi qu'aux dispositions générales concernant ces procédures (chap. IV);
C. Soit seulement aux dispositions relatives à la conciliation (chap. I), ainsi qu'aux dispositions générales concernant cette procédure (chap. IV).

Les Parties contractantes ne pourront se prévaloir des adhésions d'autres Parties que dans la mesure où elles—mêmes auront souscrit aux mêmes engagements.

Article 39

1. Indépendamment de la faculté mentionnée à l'article précédent, une Partie pourra, en. adhérant au présent Acte général, subordonner son acceptation aux réserves limitativement énumérées dans le paragraphe suivant. Ces réserves devront être indiquées au moment de l'adhésion.

2. Ces réserves pourront être formulées de manière à exclure des procédures décrites par le présent Acte:

a) Les différends nés de faits antérieurs, soit à l'adhésion de la Partie qui formule la réserve, soit à l'adhésion d'une autre Partie avec laquelle la première viendrait à avoir un différend;
b) Les différends portant sur des questions que le droit international laisse à la compétence exclusive des Etats;
c) Les différends portant sur des affaires déterminées, ou des matières spéciales nettement définies, telles que le statut territorial, ou rentrant dans des catégories bien précisées.

3. Si une des parties en litige a formulé une réserve, les autres parties pourront se prévaloir vis—à—vis d'elle de la même réserve.

4. Pour les Parties ayant adhéré aux dispositions du présent Acte relatives au règlement judiciaire ou au règlement arbitral, les réserves qu'elles auraient formulées seront, sauf mention expresse, comprises comme ne s'étendant pas à la procédure de conciliation.

Adhesions:

Turquie: (26 juin 1934)
Sous les réserves suivantes :
Seront exclus des procédures décrites dans l'Acte général :

a) Les différends nés au sujet de faits ou de situations antérieurs à la présente adhésion;
b) Les différends portant sur les questions que le droit international laisse à la compétence exclusive des États;
c) Les différends nés au sujet de faits ou de situations antérieurs à la présente adhésion.

Grèce: (14 septembre 1931)
Sous les réserves suivantes :

Sont exclus des procédures décrites par l'Acte général, sans en excepter celle de conciliation visée à son chapitre I :

a) Les différends nés de faits antérieurs, soit à l'adhésion de la Grèce, soit à l'adhésion d'une autre Partie avec laquelle la Grèce viendrait à avoir un différend;
b) b) Les différends portant sur des questions que le droit international laisse à la compétence exclusive des Etats et, notamment, les différends ayant trait au statut territorial de la Grèce, y compris ceux relatifs à ses droits de souveraineté sur ses ports et ses voies de communication.

Source: Turkish Official Gazette, 10 May 1934

APPENDIX O

BERN AGREEMENT BETWEEN TURKEY AND GREECE (11 November 1976)

1. The two parties agree that negotiations shall be frank, throughgoing and pursued in good faith, with a view to reaching an agreement based on their mutual consent with regard to the delimitation of the continental shelf as between themselves.

2. The two parties agree that these negotiations shall by their very nature be strictly confidential.

3. The two parties reserve their respective positions with regard to the delimitation of the continental shelf.

4. The two parties undertake not in any circumstances to make use of the provisions of this document, or such proposals as may be made by either side during these negotiations, outside the context of the negotiations themselves.

5. The two parties agree that there shall be no statements or leaks to the press on the contents of the negotiations, unless they decide otherwise by common accord.

6. The two parties undertake to refrain from any initiative or act concerning the Aegean Continental Shelf that might trouble the negotiations.

7. The two parties each undertake, so far as their bilateral relations are concerned to refrain from any initiative or act likely to throw discredit on the other.

8. The two parties have agreed to study the practice of States and the international rules on the subject, with a view to eliciting such principles and practical criteria as might be of use in the case of the delimitation of the continental shelf between the two countries.

9. To that end, a mixed commission will be set up to be composed of national representatives.

10. The two parties agree to adopt a gradual rhythm in the negotiating process to be followed, after mutual consultation.

Done in Berne, in two copies, in the French language, 11 November 1976

Jean TZOUNIS,	Ali Suat BİLGE,
Head of the Hellenic delegation	Head of the Turkish delegation

Source: Kılıç, Hulusi. Bilateral Agreements, Essential Documents and Declarations between Turkey and Greece since the Proclamation of the Turkish Republic Ministry of Foreign Affairs of the Republic of Turkey, (Ankara: Deputy Directorate General for Maritime and Aviation Affairs, 2000)